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In The  
**Supreme Court of the United States**

October Term 1983

No.

FRANK THOMPSON, JR.,

*Petitioner,*

-against-

UNITED STATES OF AMERICA,

*Respondent.*

**PETITION FOR WRIT OF CERTIORARI TO THE  
U.S. COURT OF APPEALS FOR  
THE SECOND CIRCUIT**

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## QUESTIONS PRESENTED

1. Whether the prosecution's failure to reveal information indicating that its chief witness may have received kickbacks of government bribe payments--despite a defense request for "any information referring to or relating to suspected violations of federal or state law" by the witness--constituted a violation of the prosecutor's disclosure obligations under Brady v. Maryland and Agurs v. United States requiring a new trial for the defendant.

2. When the prosecutor conceals exculpatory information that its agents took "kickbacks" of government bribe payments despite pretrial specific requests for this information, must the defendant, in the event he uncovers the concealment, be put to the test of proving that the hidden evidence "must have resulted in

acquittal," or is it enough for him to prove either "a reasonable likelihood that the false testimony could have affected the judgment of the jury" or "might have affected the outcome of the trial?"

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### OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit affirming the order of the United States District Court for the Eastern District of New York denying Petitioner's motion for a new trial was issued on June 14, 1983, and is set forth in the Appendix at 1a.

The opinion of the District Court for the Eastern District of New York (George C. Pratt, Judge) was issued on July 9, 1982, and is set forth in the Appendix at 18a.

(An earlier opinion of the Court of Appeals affirming Petitioner's conviction is reported at 692 F.2d 823, 860 (1982). A Petition for Certiorari from that conviction was denied, 103 S. Ct. 2437 (1983). An opinion of the District Court denying

Petitioner's post-trial due process claims is reported at 527 F. Supp. 1206 (1981). An opinion of the Court of Appeals denying appellant's pretrial motion to dismiss the indictment is reported at 642 F.2d 699 (1980).)

#### JURISDICTION

The judgment of the Court of Appeals for the Second Circuit, affirming the order of the District Court denying Petitioner's motion for a new trial was entered on June 14, 1983. The Order of the Court of Appeals for the Second Circuit denying the Petition for Rehearing was entered on July 28, 1983. This Petition for Certiorari was filed within sixty days of the final order of the Court of Appeals for the Second Circuit. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

## STATEMENT OF THE CASE

Former Congressman Frank Thompson, Jr., having once been denied review of his Abscam conviction on grounds that the Abscam operation itself violated fundamental constitutional principles, 103 S. Ct. 12437 (1983), now seeks consideration of his appeal for a new trial on the ground that the prosecution knowingly concealed exculpatory information despite Thompson's specific pretrial discovery request for the precise information.

Thompson was indicted and convicted for taking a bribe. The crucial factual issue at Thompson's trial was whether or not he had received an alleged payoff to influence official conduct by himself and former Congressman John Murphy. Unlike most other Abscam defendants, Thompson denied receiving any of the payoff money.

He insisted that he was the victim of a frame-up and that he was unaware that money had been paid over to middleman Howard Criden, allegedly on his behalf. He denied that Criden had ever shared any of that money with him. The evidence against Thompson was all circumstantial and/or hearsay.

The secret government Abscam tapes show that Thompson met twice with FBI agents Anthony Amoroso and Melvin Weinberg along with Criden, and that he rejected overt offers of money made at each meeting. At the second meeting, Amoroso passed a closed valise containing \$50,000 to Criden.

More than a week later Amoroso, Weinberg and Criden met with Congressman John Murphy. The secret tapes show that Congressman Murphy was not given any money

directly, but that a closed valise containing \$50,000 was again given to Criden. Criden's junior law partner subsequently was given immunity and testified that Criden had told him that he had given \$25,000 from the "Murphy valise" to Thompson, to split with Murphy. This was the primary live testimony against Thompson.<sup>1/</sup>

The original trial strategy of defense counsel Daniel Rezneck had been to portray Thompson as the victim of a "scam within a scam." (Rezneck Aff. 72-85a) This theory held that Thompson had been the victim of a plot between Criden and Weinberg. Under

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<sup>1/</sup> The only other testimony against Thompson came from Congressman John Murtha (also given immunity) who said that Thompson spoke to him on the House floor about some rich Arabs who had money to invest in their districts, and further that there would be "some walking around money available."

that defense scenario, Weinberg and Criden had divided the alleged Abscam bribe money between themselves after misleading both Thompson and the undercover FBI agents as to the real nature of the events that had transpired between them. Consequently, prior to trial, he filed a Brady request for any information regarding

any payments, compensation, gifts, fees, or any other things of value given to or for the benefit of Mel Weinberg;

\* \* \*

and any documents, tangible objects, or other information referring or relating to or constituting, containing, or reflecting any violations or suspected violations of federal or state law by Mel Weinberg during the period of time he has been an informant or instrumentality or person assisting any agency of the government including but not limited to the FBI. (55a)

Despite those very specific requests, the government did not disclose any information relating either to "kickback" pay-



ments to Weinberg, or relating to possible violations of the law by Weinberg.

Prior to the Thompson trial, Weinberg testified at the trial of other Abscam defendants, and he vigorously denied under oath that he had received any kickbacks of Abscam "bribe" payments. In light of this steadfast Weinberg trial testimony denying kickbacks, defense attorney Rezneck was forced to abandon his preferred defense, and instead attempted to show that middleman Criden had kept the money for himself (and his law partner), thereby "scamming" both Thompson on the one hand and the government operatives (including Weinberg) on the other. (77-78a) This was difficult indeed, because Criden testified against Thompson at trial only "on tape" and through the hearsay testimony of his law partner. He was not a "live"

government witness subject to cross examination.

The jury, after deliberation extending over three days, ultimately concluded that Thompson was guilty of taking the bribe from Howard Criden out of the valise handed to Criden at the meeting with John Murphy.

Subsequent to Thompson's trial and conviction in the Eastern District of New York, it was revealed that Weinberg had in fact participated in a double scam in regard to another Abscam defendant, Kenneth MacDonald, and, furthermore, that this possibility had been called to the attention of the prosecution prior to Thompson's trial.

The revelation of Weinberg's double-dealing came in the form of an affidavit from Weinberg's estranged wife, Cynthia

Marie Weinberg, (56a) secured by newspaper columnist Jack Anderson and submitted to the United States District Court for the District of Columbia in another Abscam case, United States v. Kelly, No. 82-1660

(D.C. Cir. decided May 10, 1983), reversing 539 F. Supp. 363 (D.C. D.C. 1982).

The implication of Mrs. Weinberg's affidavit was that her husband had received a \$45,000 kickback from Camden, New Jersey Mayor Angelo Errichetti from money paid over to Errichetti for the alleged benefit of Kenneth MacDonald, a member of the New Jersey Casino Control Commission. She described how she accompanied her husband to a meeting on Long Island with Errichetti and that when Mel returned to their car, he patted his briefcase, and said "forty-five," an apparent reference to the amount of money he had picked up.

(62a)

Less than two weeks after filing her affidavit, Marie Weinberg was found hanged in a neighbor's apartment. In an apparent suicide note, Mrs. Weinberg reaffirmed the truth of the statement in her affidavit.

(71a)

Subsequent to Mrs. Weinberg's revelation, additional evidence came to light not only confirming the fact that Melvin Weinberg had shared in the illegal Abscam payoffs but that the prosecution had good reason to be aware of that fact. On August 18, 1982, counsel to a United States Senate Select Committee issued an interim report of the results of his review of confidential FBI Abscam files. The report stated that "There is substantial evidence suggesting that on April 1, 1979, the day after a bribe payment of \$100,000 in a briefcase was

handed to Mayor Errichetti in the presence of New Jersey Control Commission Vice-Chairman Kenneth MacDonald, Errichetti met with Weinberg on Long Island and gave Weinberg a briefcase containing a portion of the bribe payment."

(94a) Senate counsel's conclusion was based upon three pieces of evidence discovered in the prosecution files:

(1) A statement by Errichetti's chauffeur and nephew Joseph DiLorenzo that he had driven Errichetti to such a meeting and that Errichetti gave a briefcase to Weinberg;<sup>2/</sup>

2/ The DiLorenzo statement was made known to defense counsel at a post-trial hearing on a motion to set aside the conviction for Due Process violations. At that time, however, there was no corroboration of DiLorenzo's statements in the face of Weinberg's vigorous and emphatic denials. In any event, it was by then too late to present this information to the jury which convicted defendant.

(2) A doctored audiotape created by Weinberg to make it appear that he had a telephone conversation with Errichetti in Camden, New Jersey, at the time the two of them were apparently meeting in Long Island. Weinberg's telephone toll records showed that the conversation had actually taken place several hours later, in time for Errichetti to have returned to Camden.<sup>3/</sup>

3/ As explained by the Court below:

The recorded conversation is preceded by a preamble in which Weinberg noted the time to be 2:30. He then labelled the cassette to reflect a 2:30 PM conversation. However, the toll call reflects a call of 8 minutes' duration from Weinberg to Errichetti in Camden - not at 2:30 but at 4:54 PM. Moreover, the tape of this conversation is the only one, out of hundreds of telephone conversations noted by Weinberg, that is preceded by a preamble noting the date and time. (10a)

(3) A document in the FBI files stating that on October 20, 1979, "Errichetti told an FBI informant that MacDonald would not and did not take any money from Errichetti," indicating further that Weinberg and Errichetti had divided the money allegedly intended for MacDonald. (96-97a)

The Final Report of the Senate Select Committee on Abscam which was issued subsequently takes some exception to the preliminary findings of its counsel. Specifically, the Final Report questioned counsel's conclusion that Kenneth MacDonald had been a totally innocent dupe of Errichetti and Weinberg. However, the Final Report does agree that "it is likely" that Weinberg "did share in one or more" of the Abscam payoffs. See Final Report of the Select Committee to Study Undercover

Activities of Components of the  
Department of Justice, to the U.S.  
Senate, 97th Cong., 2d Sess., Report No.  
97-682 at 152.

In any event, none of this information concerning Weinberg's manipulation of the Abscam scenario for his own financial benefit was made known to the Thompson defense before trial. If it had been, Thompson's trial counsel says it would have provided a "significantly stronger basis" for propounding the scam-within-a-scam defense, which he had to abandon for lack of corroborating evidence.

Not only did the prosecution fail to reveal allegations of Weinberg's double-dealing to the defendant, two former United States Attorneys have charged the Abscam prosecution with conscious and



deliberate concealment of these facts.

William Robertson, former United States Attorney for New Jersey, stated:

Based on the evidence that I have seen, Melvin Weinberg perjured himself, fabricated evidence, shared in the payoffs, and has been shielded from having to account for his activities by the very same people who are charged with enforcement of law.4/

Robertson continued:

His [Weinberg's] activities in this regard have not been fully examined, and the extent to which his true actions impact upon the verdicts has not been evaluated by the courts. (257a)

Robertson further testified that Irving

4/ Mr. Robertson's statement was presented to the Subcommittee on Civil and Constitutional Rights of the Judiciary Committee of the United States House of Representatives. The Court of Appeals agreed to incorporate it as part of the record on appeal. (8a, 17a) It is included in full in the Appendix. (105a)

Nathan, Deputy Assistant Attorney General in the Criminal Division and coordinator of the Abscam investigation for the Department of Justice, was not interested in "insuring that potential exculpatory evidence was properly disclosed" but instead "had embarked on a course designed to obscure the information." (221a)

Robertson's views were confirmed by his predecessor as U.S. Attorney for New Jersey, Robert Del Tufo, whose Congressional testimony was also incorporated into the record by the court below. (8a, 17a) Mr. Del Tufo told the House committee his assistants were blocked when they sought to investigate the possibility of a Weinberg/Errichetti scam perpetrated on MacDonald. He said Nathan complained that "New Jersey was only

interested in negative (exculpatory) facts and allegations." (159-160a)

Most revealing--in light of the prosecution's failure to acknowledge to defendant allegations that Weinberg was suspected of violating federal law--is the raging debate that was going on within the Justice Department itself over the allegations of Weinberg's corruption. The course of that debate is reviewed in U.S. Attorney Del Tufo's "ABSCAM Chronology." (106a) Del Tufo details the fruitless efforts of his New Jersey office to have Weinberg's alleged criminal escapades investigated and reports that, on June 18, 1980, some five months before the Thompson trial began, two of his deputies, attorneys Edward A. Plaza and Robert J. Weir, Jr., "asked to be relieved of their ABSCAM responsibilities

because of their concern that critical evidence in the MacDonald case was being suppressed and that a proper evaluation of possible criminal conduct by Weinberg was not being undertaken by the Department." (159a)

Yet the Thompson prosecutors failed to give an affirmative response to the demand for "any information referring or relating to ... suspected violations of federal or state law by Melvin Weinberg." (55a)

The District Court (per Judge George Pratt) denied Thompson's motion for a new trial on the ground that the evidence offered to prove that Weinberg had shared in the MacDonald payoff was not material to Thompson's case and "would [not] likely lead to an acquittal," relying upon United States v. Gilbert, 668 F.2d 94

(2d Cir. 1981), cert. denied, 456 U.S. 946 (1982). (20a) On appeal, defendant argued that the District Court had applied the wrong standard to Thompson's motion and that under Brady v. Maryland, 373 U.S. 83 (1963), and United States v. Agurs, 427 U.S. 97, 103-07 (1976), Thompson was entitled to a new trial since the prosecution had failed to disclose, in response to a specific request, exculpatory evidence which "might have affected the outcome of the trial." Id. at 104. The Court of Appeals declined to test Thompson's claim under the more stringent Agurs standard on the ground that the information concerning kickbacks to Weinberg "was not specifically requested Brady material within the meaning of Agurs." (16-17a) In so doing, the Court of Appeals opinion ignored defend-

ant's pretrial discovery demand for "information ... referring or relating to ... or reflecting any ... suspected violations of federal or state law by Melvin Weinberg." (55a) Defendant's Petition for Rehearing pointing out the Court's failure to acknowledge defendant's very specific discovery demand (37a) was denied without comment. (36a)

REASONS FOR GRANTING THE WRIT

In Brady v. Maryland, 373 U.S. 83, 87 (1963), this Court observed that:

A prosecution that withholds evidence on demand of an accused, which, if made available, would tend to exculpate him ... helps shape a trial that bears heavily on the defendant. That casts the prosecutor in the role of an architect of a proceeding that does not comport with standards of justice....

Accordingly, the Court held that "suppression by the prosecution of evidence favorable to an accused upon

request violates due process where the evidence is material ... to guilt ... irrespective of the good faith or bad faith of the prosecution."

Id.

That standard was further delineated and modified several years later in United States v. Agurs to distinguish between three "quite different situations" all of which involve "the discovery, after trial, of information which had been known to the prosecution but unknown to the defense," 427 U.S. 97, 103 (1976). As therein defined, that standard has become one of the fundamental protections of the integrity of the fact-finding system in federal criminal trials. At the heart of this Brady/Agurs rule is the principle that where there has been a

"specific and relevant" defense request for material which may be exculpatory, "the failure to make any response is seldom, if ever, excusable." Agurs, supra, 427 U.S. at 106.

The decision below makes a mockery of the Brady/Agurs standard. If a request for "any information" relating to "suspected violations of ... law" by Melvin Weinberg was not specific enough to require production of statements accusing Weinberg of sharing in "bribe" payments, then the Agurs concept of specificity is meaningless. Indeed, if sharing in bribe payments is not "a violation of law," then why was defendant Thompson indicted and prosecuted for precisely the same alleged conduct?

The Court of Appeals could not dispute the denial of defendant's rights



under Brady and Agurs. Instead, it just ignored the undisputed facts of defendant's discovery demand.<sup>5/</sup> And when those facts were again called to its attention in defendant's Petition for Reharing (39-41a), the Court denied the Petition without comment. (36a)

5/ The Court acknowledged only one of defendant's two separate requests for information about Weinberg's sharing in Abscam "bribe" payments. It held that the prosecution could have properly interpreted a demand for information concerning payments by the government to or for the benefit of Weinberg "as focusing on benefits from the government" and not encompassing government payments received by Weinberg as kickbacks. (17a) Counsel for defendant told the Court at oral argument and again in a Supplemental Brief that when defendant sought information about government payments to Weinberg, it didn't matter whether those payments had been made directly, had been deposited in a Swiss bank account opened in Weinberg's name, or had been given to the tooth fairy to put under his pillow. But whether or not the panel erred as to the specificity of the request for information concerning payments to Weinberg, there surely can be no doubt that there was a specific request for information concerning suspected law violations by Weinberg.

By refusing to acknowledge defendant's very specific request for the undisclosed information, the court below decided it did not have to scrutinize "plaintiff's new trial claim under either of the strict standards of Agurs that apply to ... failure to produce specifically requested exculpatory information." (15a) That strict standard requires a new trial whenever the undisclosed evidence "might have affected the outcome of the trial." 427 U.S. at 106. Certainly in this case it cannot be confidently said that the Thompson jury would have been totally unaffected if defendant, who took the stand to deny receipt of any part of the Abscam "payoffs," could have informed the jury that in at least one other Abscam case, chief government witness Weinberg had pulled a double scam and pocketed himself

the "bribe" money allegedly intended for a public official. As the Court of Appeals noted:

If [the defendant] could have shown that Weinberg and Errichetti duped MacDonald, then, he contends, the jury in this case would have been more likely to believe that Weinberg and Criden duped Thompson. (14a)

Just as in Brady itself, it would be "too dogmatic" for a Court to say that "the jury would not have attached any significance to this evidence" in the context of the case. 373 U.S. at 88.

If the Court below actually meant to say that defendant's discovery demand was not specific enough, then its opinion is in conflict with decisions in a number of other Circuits, where criminal convictions have been set aside for prosecutorial failure to respond affirmatively to requests no more specific than defendant's.

Compare to defendant's request for information reflecting suspicion that Weinberg may have violated the law, the following cases in which it was found there were requests for "specific" information concealment of which entitled defendant to a new trial:

° 3rd Circuit - Request for information "which may be used to impeach prosecution's witnesses, including but not limited to any standards used by the Department of Justice, the Internal Revenue Service or the U.S. Attorney in declining prosecution of similar cases." United States v. McCrane, 547 F.2d 204, 207 (1976).

° 4th Circuit - Request to provide names of two women whose identities were material to the case. Sennett v. Sheriff of Fairfax County, 608 F.2d 537, 538 (1979).

° 5th Circuit - Request for produc-

tion of "the offense reports and any other written statements dealing with the case." Sellers v. Estelle, 651 F.2d 1047, 1077 (1981). (The court held that the defense "could not have been more specific absent express knowledge of [the] reports.")

° 6th Circuit - Request for "all exculpatory statements" in possession of the prosecution, including statements by a specifically identified material witness. Jones v. Jago, 575 F.2d 1164, 1166 (1978), cert. denied, 439 U.S. 883 (1978). Compare United States v. Enright, 579 F.2d 980, 989 (1978).

° 1st Circuit - Although the court affirmed defendant's conviction on ground that the undisclosed information would not have affected the outcome of the trial, it held that a request for a "full and complete

statement of all promises, rewards and/or inducements of any kind made by the government ... to induce or encourage the giving of testimony or information and made to ... any prospective witness whom the government intends to call at trial" and for "any evidence which may be used to impeach or discredit any witness the government intends to call at the trial, ... particularly, but not exclusively, inconsistent statements of a witness or between witnesses" was "specific" under Agurs. United States v. Flaherty, 668 F.2d 566, 587-88 (1981).

Indeed, the opinion below is even inconsistent with a 1981 holding in the Second Circuit itself, Perkins v. Lefevre, 642 F.2d 37, 39 (1981), where it was held that a request to "produce the criminal records of any witnesses the prosecution intended

to call at trial" was "specific."

See also Scurr v. Niccum, 620 F.2d 186, 190 (1980), in which the Eighth Circuit, affirming the grant of a habeas writ for violation of Agurs in a situation where the original discovery demand was admittedly quite general, emphasized that the issue of specificity of the request cannot be determined "in a vacuum":

Rather the question must be asked whether under all the circumstances presented by the case, the request was such as to give the prosecution reasonable notice of what the defense desired. In other words, "specificity" is a function of several factors, including the literal language of the defense's request itself, the apparent exculpatory character of the evidence sought and the reasonableness of the explanation, if any, for which the evidence was not exposed or was not considered to be material by the prosecution.

Here, the language could have not been more specific that the defendant

sought information about Weinberg's suspected violations of law, and, in the context of Thompson's defense, it was obviously exculpatory. About the only explanation the prosecution appears to offer for non-disclosure is the claim that it doubted the truth of the allegations about Weinberg.<sup>6/</sup> Even if that claim was credible,<sup>7/</sup> the defense request was for information reflecting suspicion on Weinberg, not proven allegations.

It is respectfully suggested that

6/ The prosecution also claims that the sought information had been presented in camera to the trial judge and determined by him to be immaterial to the Thompson case. The judge, of course, was not the party responsible for answering defendant's discovery requests and the prosecution cannot avoid its obligations under Brady and Agurs by dumping its voluminous files in the lap of the court. Cf. Alderman v. United States, 394 U.S. 165, 182 (1969).

7/ See Statement of the Case and especially the Robertson and Del Tufo statements included in the Appendix.



the opinion below is inconsistent with and conflicts with the decisions of other Circuits and with a prior decision within the same Circuit. It seriously undermines the rights of criminal defendants to fair consideration of their claims for new trials where, following conviction, it is disclosed that exculpatory information was concealed by the prosecutor. Most importantly, the opinion below would all but nullify the effect in the Second Circuit of the doctrine of Brady v. Maryland, a liberating decision which offers fundamental protection for the innocent against the possibility of erroneous conviction. It threatens to transform criminal justice within the Second Circuit into a sporting contest in which the prosecutor can hide clearly exculpatory evidence from the defense,

even in the face of specific discovery requests, and then put the defendant-- should he ever uncover the concealment--to the tortured test of proving that the hidden evidence would have resulted in acquittal.

#### CONCLUSION

The Petition for Certiorari should be granted.

Respectfully submitted,

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September 1983

## APPENDIX

## A P P E N D I X

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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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No. 531—August Term, 1982

Argued: January 4, 1983      Decided: June 14, 1983

Docket No. 82-1271

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UNITED STATES OF AMERICA,

*Appellee,*

—V.—

FRANK THOMPSON, JR.,

*Defendant-Appellant.*

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Before:

TIMBERS, NEWMAN, and PIERCE,

*Circuit Judges.*

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Consolidated appeals from orders of the District Court  
for the Eastern District of New York (George C. Pratt,  
Judge) denying motions by former Congressman Frank

Thompson, Jr. for a new trial on Abscam-related charges and to supplement the record on appeal.

Affirmed.

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FRANK ASKIN, Newark, N.J. (Daniel H. Politt, Chapel Hill, N.C., Neal Rutledge, Washington, D.C., on the brief), *for defendant-appellant*.

LAWRENCE H. SHARF, Special Counsel, Brooklyn, N.Y. (Raymond J. Dearie, U.S. Att'y, Edward A. McDonald, Att'y-in-Charge, Organized Crime Strike Force, Brooklyn, N.Y., on the brief), *for appellee*.

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NEWMAN, *Circuit Judge*:

Former Congressman Frank Thompson, Jr. appeals from an order of the District Court for the Eastern District of New York (George C. Pratt, Judge)<sup>1</sup> entered July 13, 1982, denying his motion for a new trial on bribery charges arising out of the Abscam investigation. Thompson's conviction was affirmed by this Court on September 3, 1982, *United States v. Myers*, 692 F.2d 823 (2d Cir. 1982), *cert. denied*, 103 S. Ct. \_\_\_\_ (May 31, 1983). Thompson also appeals from Judge Pratt's subse-

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<sup>1</sup> Judge Pratt, a member of this Court, was sitting by designation in the District Court.

quent order entered December 30, 1982, denying a motion to supplement the record on appeal.<sup>2</sup> For the reasons that follow we affirm the denial of both motions.

I.

The details of the evidence on which Thompson was convicted are set out in our prior opinion, *id.* at 832-34, familiarity with which is assumed. In brief, the evidence disclosed that on October 9, 1979, undercover agents, posing as representatives of an Arab sheik, had transferred a briefcase containing \$50,000 to Howard Criden in Thompson's presence, that Criden had given \$20,000 of this money to Thompson, that Thompson had then arranged for a similar \$50,000 transaction involving former Congressman John Murphy on October 20, 1979, and that Criden had given Thompson \$10,000 of this money for himself and \$15,000 for Murphy. At trial Thompson denied receiving any of the money transferred on October 9 and 20 and denied any knowledge of such money, claiming that he thought the briefcase transferred on October 9 contained only documents. Evidence of his receipt of money and his guilty knowledge included a videotaped conversation between Criden and the undercover agents on October 9, which revealed negotiations for the money to be transferred without Thompson's having to acknowledge it; testimony of Ellis Cook, Criden's law partner, recounting Criden's report that he had given Thompson \$20,000 from the October 9 payment and \$25,000 from the October 20 payment, of which \$15,000 was for Murphy; the occurrence of the Murphy

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<sup>2</sup> We consolidated both appeals, heard oral argument on January 4, 1983, and allowed additional time thereafter for filing of briefs on the appeal from the denial of the motion to supplement the record.



transaction, which Thompson had promised to arrange; and testimony of Congressman John Murtha that Thompson had solicited him to receive \$50,000 of the sheik's money in return for assistance on immigration matters.

*The New Trial Claims.* In seeking a new trial, Thompson claims that newly discovered evidence will enable him to prove two circumstances allegedly pertinent to a jury's consideration of his guilt: first, that Melvin Weinberg, a key undercover operative in the Abscam operation, received as a kickback a significant portion of \$100,000 of the sheik's money, which Weinberg had transferred to former Camden Mayor Angelo J. Errichetti on March 31, 1979, in the presence of the late Kenneth N. MacDonald, then vice-chairman of the New Jersey Casino Control Commission; and, second, that Weinberg received gifts of personal property from Errichetti. The alleged significance of these circumstances requires some elaboration.

Errichetti was a middleman in transactions resulting in the payment of bribes from the sheik's representatives to various public officials, including former Congressmen Michael O. Myers and Raymond F. Lederer. See *United States v. Myers, supra*, 692 F.2d at 829-32. The \$100,000 payment to Errichetti in MacDonald's presence resulted in an indictment against MacDonald, who died before trial of the charges against him. Thompson contends that if Weinberg received a substantial portion of the \$100,000 payment in the MacDonald transaction, a jury could infer that Weinberg had orchestrated a "scam within a scam." Thompson's theory is that Government agents were induced to part with \$100,000 in the belief that its transfer to Errichetti would prove MacDonald's guilt of accepting a bribe from those he thought wanted a gambling license,

either because MacDonald received a portion of the money or at least knew its transfer required him to compromise his office, whereas in reality MacDonald was the innocent victim of a plot whereby Errichetti took the \$100,000 ostensibly for MacDonald's benefit, divided it with Weinberg, and left MacDonald with neither money nor knowledge of what was happening. Thompson tenders this theory in the hope of persuading a jury that if Weinberg used Errichetti to make the Government believe that MacDonald was guilty, he did the same thing with Criden to make the Government believe that Thompson was guilty, and that in both instances the target received no money and had no knowledge of a bribe.

The alleged significance of Weinberg's receipt of personal property from Errichetti is more straightforward. The claim is that Weinberg's credibility as a witness will be impeached since in testimony at Myers' trial he had denied receipt of any gifts from Errichetti.

*The New Trial Evidence.* To support his claims for a new trial, Thompson presented several items to the District Court. The principal item was a January 16, 1982, affidavit of Cynthia Marie Weinberg, the now deceased wife of Mel Weinberg. Marie Weinberg, as she was known, committed suicide ten days after signing the affidavit. In her affidavit she recounted an episode in which she drove her husband to a meeting with Errichetti at a Holiday Inn off the Long Island Expressway. Mel told her to park on the side of the road and said he had to pick up something from Errichetti. He returned with a briefcase, which he patted, and said "forty-five." Mel told Marie that F.B.I. agent Anthony Amoroso, who was supposed to be watching Mel, did not know of this meeting because Mel had "ducked" him. Thompson con-

tends Marie was referring to an episode first brought to the Government's attention on June 10, 1980, when an F.B.I. agent interviewed Joseph DiLorenzo, Errichetti's nephew and chauffeur. DiLorenzo recounted an episode in which he drove Errichetti to a meeting with Weinberg at a rest stop on the Long Island Expressway on April 1, 1979, the day after Weinberg had handed Errichetti, in MacDonald's presence, a briefcase containing \$100,000. He said that Errichetti entered Weinberg's car, which he described as a Lincoln Continental, and gave Weinberg a briefcase. It is not clear whether Marie Weinberg and DiLorenzo are describing the same meeting (or whether either is reporting truthfully or whether Marie's affidavit is admissible<sup>3</sup>), but for purposes of this appeal we accept Thompson's claim that their statements are probative of Weinberg's receipt of \$45,000 from Errichetti on April 1, 1979.<sup>4</sup>

<sup>3</sup> Thompson suggests that Marie's affidavit would be admissible either as a declaration against interest, Fed. R. Evid. 804(b)(3), on the theory that she expressed concern for her safety in making the affidavit, or under the "catch-all" exception of the hearsay rule, Fed. R. Evid. 804(b)(5). We express no view on either evidentiary claim.

<sup>4</sup> Thompson points out the unlikelihood that Weinberg and Errichetti had two meetings along the Long Island Expressway in early 1979 and the fact that DiLorenzo described the same make and model car that Marie said she was driving. Thompson relies especially on evidence, detailed in the text, *infra*, tending to show that Weinberg deliberately tried to create false evidence to show that Errichetti was in Camden, New Jersey, at 2:30 p.m. on April 1, 1979. The Government points to various items indicating that Marie and DiLorenzo are talking about different meetings. Her affidavit places the meeting "between the end of 1978 and the beginning of 1978 [*sic*]"; even if she meant to say "the beginning of 1979," the Government contends that this time frame excludes April 1. In addition, she described an episode in which Weinberg left her car and returned with a briefcase, whereas DiLorenzo describes an episode in which Errichetti left his car and entered Weinberg's. Finally, in a lengthy recorded interview with a newspaperman, Indy Badhwar, Marie expressed her own doubts whether the meeting she recalled was the same one that DiLorenzo described.

Marie Weinberg's affidavit also reported that sometime in 1978 or 1979 her husband had brought home to their Long Island home several "gifts" from a "friend," including a microwave oven, a stereo system, a Betamax video recorder, and three Sony television sets. She also claimed that F.B.I. agents had visited her home, observed these items, and helped pack them for shipment in connection with the Weinbergs' move to Florida. She further claimed that during one of the Abscam trials in 1980, her husband had telephoned her and told her to remove the microwave oven and video recorder from their Florida home and hide them elsewhere, which she did.

Also submitted in support of Thompson's new trial motion was a transcript of a recorded interview of Marie Weinberg conducted by Indy Badhwar, a newspaperman associated with columnist Jack Anderson, an affidavit from Badhwar concerning the interview, several photographs of personal property allegedly photographed in Mrs. Weinberg's apartment, and affidavits from Daniel A. Rezneck, Esq., trial counsel for Thompson, and from one of Rezneck's associates. Badhwar's affidavit and his transcript of his recorded interview with Marie add little, if anything, to the allegations of her affidavit. The photographs are obviously probative of the existence of the items Marie Weinberg claims were given to her husband. The affidavits of Rezneck and his associate purport to show the significance Thompson's trial counsel would have attached to evidence of Weinberg's receipt of a portion of the MacDonald payment. Rezneck asserts that prior to trial he considered a defense based on the claim that Weinberg and Criden were both plotting to obtain money in a scheme in which Thompson was an innocent dupe. His theory, outlined in a memorandum written prior to the trial, was that Criden thought he was scam-

ming the sheik and Weinberg knew he was scamming the Government. Rezneck claims that he made no such allegations against Weinberg at Thompson's trial because of the outcome of the *Myers* trial, in which Weinberg denied allegations that he had received kickbacks and gifts and Myers was convicted.<sup>5</sup> Rezneck therefore defended Thompson on the theory that Criden alone had run a "scam within a scam." His conclusion is that knowledge of the materials offered in support of the new trial motion would have provided a "significantly stronger basis" for propounding his original defense theory.<sup>6</sup>

Thompson's December 16, 1982, motion to supplement the record on appeal from the denial of his new trial motion presented to the District Court an interim report by staff counsel to a Select Committee of the United States Senate investigating the Department of Justice's handling of the Abscam operation and written statements of Robert J. DelTufo and William W. Robertson, both former United States Attorneys for the District of New Jersey, and Justin P. Walder, counsel for MacDonald, submitted to the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary of the United States House of Representatives. On December

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<sup>5</sup> Why Myers' conviction should have deterred Thompson's trial counsel from claiming that Weinberg duped Thompson is not apparent. Myers, who was caught on videotape accepting cash and speaking explicitly about cash bribes, did not deny receiving money and did not claim to have been duped. His claim was that he was pretending to promise to use his office for the sheik's benefit, but never intended to do so. See *United States v. Myers*, *supra*, 692 F.2d at 831, 840-42.

<sup>6</sup> Thompson's brief claims that Rezneck also asserts that he would have used his original theory (including Weinberg as a perpetrator of the "scam within a scam") if he had known of the subsequently disclosed allegations that Weinberg received part of the MacDonald payment. Br. for Appellant at 7. Rezneck's affidavit does not so state.

27, 1982, Thompson expanded his request by asking Judge Pratt to include in the record the portion of the Senate Select Committee's final report entitled "Allegations that Weinberg Shared in Bribe Payments to Abscam Suspects." See *Final Report of Select Committee to Study Undercover Activities of Components of the Department of Justice*, S. Rep. No. 97-682, 97th Cong., 2d Sess. 129-52 (1982) (hereafter "Select Committee Report"). In response to the motion to supplement the record, the Government submitted to Judge Pratt the portion of the Select Committee's final report entitled "Allegations Regarding Kenneth N. MacDonald." See Select Committee Report, *supra*, at 241-62.

The principal items of evidence discussed in the documents submitted by Thompson concern the claim that Weinberg received a portion of the \$100,000 he had paid to Errichetti in MacDonald's presence. Most of this evidence had previously been presented to Judge Pratt in the course of the due process hearing that he conducted after the conclusion of the trials of Thompson, Murphy, Myers, and Lederer. The excerpt from the Select Committee's report summarizes Errichetti's testimony to the Committee that he had met Weinberg at a rest stop along the Long Island Expressway on April 1, 1979, and given him \$37,500 of the \$100,000 MacDonald payment. Select Committee Report, *supra*, at 142-43. He also told the Committee that this \$37,500, plus \$25,000 of bribe money he claimed to have given back to Weinberg on January 20, 1979, was to have been placed in an escrow account for use when Errichetti and MacDonald retired. *Id.* at 143.

The Committee's report also sets forth evidence indicating that Weinberg misled the Abscam investigators and prosecutors into disbelieving DiLorenzo's June 10, 1980,



report that Errichetti and Weinberg had met on April 1, 1979. Weinberg had given the agents a tape recording of an eight-minute telephone call he made on April 1 from Long Island to Errichetti in Camden, New Jersey. The recorded conversation is preceded by a preamble in which Weinberg noted the time to be 2:30 p.m. He then labeled the cassette to reflect a 2:30 p.m. conversation. However, toll call records for April 1, 1979, reflect a call of eight minutes' duration from Weinberg to Errichetti in Camden, not at 2:30 p.m., but at 4:54 p.m. Moreover, the tape of this conversation is the only one, out of hundreds of telephone conversations recorded by Weinberg, that is preceded by a preamble noting the date and time.<sup>7</sup> *Id.* at 143-47. This evidence is probative of the conclusion, advanced by Thompson and shared by the Select Committee, *id.* at 146, that Weinberg faked the time of the 4:54 p.m. phone call to create evidence that would lead the Government to believe that Errichetti was in Camden at 2:30 p.m. and had not met with Weinberg along the Long Island Expressway on that date.<sup>8</sup> The Committee relied on this evidence of a false alibi as the primary reason for crediting Errichetti's claim that he had met

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<sup>7</sup> In this recorded conversation, Errichetti tells Weinberg that the \$100,000 was given to MacDonald, that MacDonald authorized a payment of \$25,000 to Amoroso to cover the cost of repairing the sheik's yacht, and that MacDonald was happy with the remaining \$75,000. Select Committee Report, *supra*, at 145.

<sup>8</sup> DiLorenzo's account of the April 1, 1979, meeting had not specified a precise time of day. Apparently the Select Committee came to the conclusion that Weinberg's effort to make the 4:54 p.m. phone call appear to have been made at 2:30 p.m. shows that the meeting occurred at 2:30 p.m., a time for which Weinberg realized he might need an alibi. Weinberg told the Committee he recorded the preamble at 2:30 p.m., experienced a delay in reaching Errichetti, and then forgot that the preamble did not accurately reflect the time the call was actually made. Select Committee Report, *supra*, at 144.

Weinberg on April 1 and given him a portion of the MacDonald payment. *Id.* at 143.

*The District Court's Rulings.* Judge Pratt denied the motion for a new trial, ruling that the evidence offered to prove that Weinberg had shared in the MacDonald payment was not material to Thompson's case and would not likely have led to an acquittal. See *United States v. Gilbert*, 668 F.2d 94, 96 (2d Cir. 1981), *cert. denied*, 456 U.S. 946 (1982). He reasoned that since Thompson's defense had been that he was being "scammed" by someone and had no knowledge of any payments of money to himself or others, evidence suggesting that Weinberg participated in a "scam within a scam" would have added little if anything to the defense. Judge Pratt did not explicitly mention the claim that evidence concerning Weinberg's receipt of personal property would have impeached his credibility; however, by referring to prior rulings on new trial motions by other Abscam defendants, including Myers, Errichetti, and Criden, Judge Pratt obviously intended to reiterate his prior conclusion that the claim failed both because Weinberg's testimony was not significant and because abundant evidence had been available to impeach Weinberg's credibility.

In denying Thompson's motion to supplement the record, Judge Pratt rested his decision on the ground that the evidence described in the materials submitted, elaborating upon the MacDonald payment, would have been excluded from evidence under Fed. R. Evid. 403 if offered at Thompson's trial. He stated that the probative value of the evidence that MacDonald had been duped was "small" with respect to Thompson's guilt or innocence and that the "low probative value" was substan-



tially outweighed by "the dangers of confusion of issues and waste of time" since it would have been necessary to try the entire MacDonald case in order to present to a jury the claim that Thompson sought to base on the MacDonald transaction. He also observed that the evidence that MacDonald had been duped was "not strong." In this connection he noted the marked difference between the preliminary views of the Select Committee counsel in their interim report and the views of the Committee in its final report. The final report states that an "incomplete review" of Abscam files had caused the Committee's counsel to suggest in their interim report that there was substantial evidence that Errichetti had duped MacDonald, Select Committee Report, *supra*, at 241; the final report concludes that "the weight of the evidence shows that MacDonald knowingly attended the March 31, 1979, meeting with the intent of using the influence of his public office for the purpose of enabling his companion, Angelo Errichetti, to obtain a payment of \$100,000 and for the further purpose of obtaining either an immediate or a future benefit for himself." *Id.* at 242.

*Claims on Appeal.* On appeal Thompson challenges Judge Pratt's conclusions and also contends that he applied too strict a standard in assessing the new trial motion. In Thompson's view, his motion should not have been tested under the standard of Fed. R. Crim. P. 33—whether the evidence would likely have led to an acquittal, *United States v. Gilbert, supra*, but under the more exacting standards, outlined in *United States v. Agurs*, 427 U.S. 97, 103-07 (1976), that apply when the Government fails to disclose evidence that would show perjury by a prosecution witness of which the prosecution was or should have been aware, *see Mooney v. Holohan*,

294 U.S. 103, 112 (1935) (per curiam), or fails to disclose material exculpatory evidence in response to a specific request, see *Brady v. Maryland*, 373 U.S. 83, 87 (1963). In these circumstances, a new trial is warranted if "there is any reasonable likelihood that the false testimony could have affected the judgment of the jury," *Agurs, supra*, 427 U.S. at 103 (footnote omitted), or if the undisclosed exculpatory evidence "might have affected the outcome of the trial," *id.* at 104. Thompson contends that the Government knew or should have known that Weinberg's denial of receiving gifts or kickbacks was false and that its entire theory of Thompson's guilt was false; he also urges that DiLorenzo's June 10, 1980, claim that Weinberg received a portion of the \$100,000 MacDonald payment should have been disclosed pursuant to a pretrial *Brady* request.

## II.

*Allegations of Gifts to Weinberg.* There is no basis whatever for a new trial based on Marie Weinberg's averment that her husband received gifts of personal property from a "friend" (presumably Errichetti). Even if such gifts were received, this would have had no bearing on the issues in Thompson's trial. Weinberg was never asked about such gifts at Thompson's trial and consequently never denied receiving them. Moreover, there was abundant evidence available to Thompson to impeach Weinberg, if he had cared to do so. Finally, Weinberg's testimony against Thompson was "not significant," as Thompson himself concedes.<sup>9</sup> Reply Br. for Appellant at

<sup>9</sup> Weinberg's direct testimony at Thompson's trial was devoted, almost entirely, to qualifying for admission audio- and videotapes of conversations in which he had participated.

8. Thus, under Rule 33 or any of the standards discussed in *Agurs*, evidence of Weinberg's receipt of a microwave oven and other items from Errichetti does not remotely warrant a new trial.<sup>10</sup>

*Allegations of Kickbacks to Weinberg.* As Thompson points out on appeal, his argument really does not concern the credibility of Weinberg; instead, he advances the more fundamental claim that his alleged new evidence of Weinberg's receipt of kickbacks and the undisclosed report of DiLorenzo's account of the April 1, 1979, meeting at which Weinberg allegedly received a portion of the \$100,000 MacDonald payment combine to provide a basis on which Thompson could have established a successful defense to the charges against him. If he could have shown that Weinberg and Errichetti duped MacDonald, then, he contends, the jury in this case would have been more likely to believe that Weinberg and Criden duped Thompson.

We agree with Judge Pratt that the evidence in support of this claim does not warrant a new trial for the fundamental reason that it would not be admissible. Judge Pratt, having presided at Thompson's trial, was in the best position to make the assessment required by Rule 403. As he concluded, the probative force of the new evidence is not substantial. It may show, as the Senate Select Committee concluded, that Weinberg received a portion of the \$100,000 MacDonald payment. But it does not show that MacDonald did not receive some of that money, and it leaves entirely to conjecture the claim that

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<sup>10</sup> In view of the complete lack of significance of the "gift" evidence to Thompson's trial, we have no occasion to assess whether Marie Weinberg's affidavit provides facts or only conclusory suppositions concerning the alleged knowledge by F.B.I. agents of her husband's receipt of gifts from Errichetti.

MacDonald was duped, a conclusion the Select Committee firmly rejected. Select Committee Report, *supra*, at 242. It is entirely too speculative to move from the claim that Weinberg received a kickback (itself a matter of sharp dispute), to the claim that Weinberg and Errichetti duped MacDonald, and then to the ultimate claim that Weinberg and Criden (without Errichetti) duped Thompson. Moreover, the complicated and often contradictory evidence concerning the MacDonald payment, which we have only barely indicated, abundantly supports Judge Pratt's conclusion that Thompson's current claim would have required trial of the entire MacDonald case.<sup>11</sup> Judge Pratt did not err in ruling that the probative weight of the evidence concerning the MacDonald payment and its disposition was substantially outweighed by the dangers of confusion and delay.

Furthermore, we agree with the Government that the prosecution's knowledge, prior to trial, of DiLorenzo's account of the April 1, 1979, meeting between Errichetti and Weinberg does not trigger scrutiny of Thompson's new trial claim under either of the strict standards of *Agurs* that apply to knowing use of perjured testimony or failure to produce specifically requested exculpatory evidence. Since Weinberg was never asked at Thompson's trial about meeting Errichetti on April 1 or ever receiving a kickback from him, there was no denial of these alleged occurrences that can even be claimed to have been false, much less known to the prosecution to have been false.<sup>12</sup>

<sup>11</sup> Since exclusion of the MacDonald evidence would have been a correct application of Rule 403, we need not consider the substantial threshold objection that such evidence would have been excludable under Rule 404(b) as evidence of other acts offered to show that on another occasion a person (Weinberg) acted in conformity with a character trait.

<sup>12</sup> At Thompson's trial, defense counsel elicited from Weinberg on cross-examination his denial of receiving any portion of the Thompson

Nor can it fairly be said, as Thompson contends, that with awareness of DiLorenzo's account of the April 1 meeting, the prosecution knew or should have known that Thompson was duped, thereby rendering the entire Government case against him false. When DiLorenzo gave his account of the April 1 meeting, the Government had Weinberg's denial that such a meeting had taken place and also had his tape of his telephone conversation with Errichetti that appeared to preclude a 2:30 p.m. meeting on Long Island. It remains a matter of dispute whether Weinberg met with Errichetti on April 1 and ever received a kickback from him. It is fanciful to suggest that the Government knew or should have known that such a meeting occurred, that "therefore" a kickback was received, that "therefore" MacDonald was duped, and that "therefore" Thompson was duped. Neither prior to Thompson's trial, nor since, is there any basis to believe that any of the evidence against him was known to the prosecution to be false, or was false at all.<sup>13</sup>

Nor was DiLorenzo's account of the April 1 meeting producible as *Brady* material. Thompson's detailed pre-trial *Brady* motion made a series of requests for Government benefits conferred on Weinberg in the form of

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or Murphy payments from Criden. This appears to have been done not to impeach Weinberg, but to use Weinberg's testimony in an effort to discredit Criden's report to Ellis Cook, his law partner, concerning payments to Thompson. Cook testified that Criden told him he had paid portions of each of the two \$50,000 payments to Thompson and also had paid small amounts to Weinberg and Amoroso.

<sup>13</sup> Ironically, the one item of evidence from all of the materials tendered by Thompson that relates most directly to Thompson's guilt or innocence points markedly toward guilt. The Select Committee's final report recounts Criden's testimony to the Committee that he did transfer portions of the two \$50,000 payments to Thompson. Select Committee Report, *supra*, at 151 n.105.

salary, expenses, and consideration on criminal charges, and then sought in item 24(e) "any payments, compensation, gifts, fees, or any other things of value given to or for the benefit of Melvin Weinberg." It was entirely appropriate for the prosecution to understand this request as focusing on benefits from the Government. Thus viewed, DiLorenzo's account of the April 1 meeting, with its arguable inference that Weinberg received a kickback from Errichetti, was not specifically requested *Brady* material within the meaning of *Agurs*.

We therefore conclude that Judge Pratt was entirely correct in denying the motion for new trial and in denying the subsequent motion to supplement the record on appeal. However, as Thompson points out, the materials sought to be added to the record could have been submitted in support of a second motion for a new trial; since Judge Pratt assessed their legal significance and found them insufficient to warrant a new trial and since we agree with that conclusion, we will exercise our discretion under Rule 10(e) of the Federal Rules of Appellate Procedure to supplement the record with all of the materials Thompson submitted to Judge Pratt plus the MacDonald section of the Select Committee's Final Report, submitted to Judge Pratt by the Government. Upon the entire record, the denial of a new trial is affirmed.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, :  
 : Docket #:  
 v. :  
 : CR-80-00291  
 FRANK THOMPSON, JR., :  
 JOHN M. MURPHY, and :  
 HOWARD L. CRIDEN, : MEMORANDUM  
 Defendants : & ORDER

-----:  
APPEARANCES:

UNITED STATES DEPARTMENT OF JUSTICE  
ORGANIZED CRIME STRIKE FORCE  
by: Lawrence H. Sharf  
35 Tillary Street  
Brooklyn, New York 11201

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PRATT, C.J.

Relying upon newly discovered evidence in the form of allegations made by Marie Weinberg, the deceased wife of Mel Weinberg, defendant Thompson moves

for a new trial pursuant to FRCP 33 or alternatively to reopen the "due process" hearing. The court has previously reviewed the evidence relied upon by defendant Thompson in connection with similar motions by defendants Myers, Errichetti, Johanson, Criden, Williams and Feinberg. See memorandum and order of March 24, 1982 denying motions.

Defendant argues that had the newly discovered evidence of governmental misconduct been available at the time of trial, counsel may well have elected to present a different defense than the one relied upon at trial. Thompson explains that at trial he asserted only that Criden was attempting to "scam" both Murphy and Thompson; his "new" defense asserts that Criden and Weinberg together attempted to "scam" Murphy and Thompson.



Since the essence of Thompson's trial defense was that he was being "scammed" by someone, and that he had no knowledge of the true nature of the underlying transaction, the additional evidence now relied upon can hardly be characterized as "material", the standard defendant must meet before a new trial is warranted. See United States v. Agurs, 427 U.S. 97, 96 S.Ct. 2392 (1976). Nor can it seriously be argued that the additional evidence would likely lead to an acquittal. United States v. Gilbert, \_\_\_ F.2d \_\_\_ (CA 2 Dec. 11, 1981). The motion for a new trial is denied.

Thompson's motion to reopen the due process hearing relies upon the same arguments previously advanced by other defendants and rejected by the court. See memorandum and order dated

March 24, 1982. The motion to reopen the due process hearing is denied for the reasons stated in the March 24, 1982 order.

SO ORDERED.

Dated: Uniondale, New York  
July 9, 1982

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GEORGE C. PRATT  
U.S. CIRCUIT JUDGE\*

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\*Of the United States Court of Appeals for the Second Circuit, sitting by designation.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, :

v. :

FRANK THOMPSON, JR.,  
Defendant

Docket #:

CR-80-00291

MEMORANDUM

& ORDER

APPEARANCES:

UNITED STATES DEPARTMENT OF JUSTICE  
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PRATT, C.J.:

Defendant Thompson has appealed to  
the United States Court of Appeals for  
the Second Circuit from this court's  
denial of his motion for a new trial.  
Defendant's motion in the circuit court  
to supplement the record on appeal was

denied by order dated December 8, 1982, "without prejudice to a prompt application to the District Court to supplement the record in the District Court."

As part of its order, the circuit court stated:

We restore to the District Court a limited jurisdiction to consider and act upon Thompson's request to supplement the record and any request by the Government to supplement the record in response to any matters added at Thompson's request.

Acting on that permission, defendant Thompson has moved this court for an order supplementing the record by adding to it the following:

1. Interim report of the Senate Select Committee on the Abscam investigation.

2. Written statement of former New Jersey United States Attorney William W. Robertson, submitted to the

House of Representatives subcommittee investigating Abscam.

3. Written statement and appendix of Robert J. Del Tufo, former New Jersey Assistant United States Attorney, submitted to the same house subcommittee.

4. A letter from Justin P. Walder, who was attorney for Kenneth MacDonald, addressed to the House Committee on the Judiciary, dated September 13, 1982.

5. Eight internal memoranda of the justice department relating to Weinberg's credibility and the MacDonald case.

6. A document identified only as "government document BQ87-81067".

By letter delivered to the court on December 28, 1982 Thompson's attorney supplements the list by adding a portion of the Select Committee's final report relating to "allegations that Weinberg

shared in bribe payments to Abscam suspects."

Defendant argues that his original motion for a new trial was based on "reveleations by Marie Weinberg strongly indicating that her husband had helped 'frame' Abscam target Kenneth MacDonald and had converted to his own use the so-called MacDonald payoff money." Defendant's memorandum at 2. Defendant now characterizes his position on that motion as being that "had he been able to present such evidence to his jury he would have been in a position to demonstrate that he [Thompson] also had been victimized by the double-dealing Weinberg." Id. The additional evidence now sought to be added to the record would, according to Thompson, expand manifold the probity of his claim, and, in addition, would verify that the

prosecution "was well aware of Weinberg's double-dealing in regard to MacDonald."

Thompson distinguishes his present application from a similar unsuccessful application with respect to Harrison A. Williams Jr., on the ground that William's claim related to questions of law involved in the due process considerations, whereas Thompson's claims go to the issues submitted to the jury which convicted him. In essence, Thompson claims that the government deliberately concealed from him exculpatory material relating to Weinberg's "double-dealing in regard to MacDonald" to which Thompson was entitled at his trial under the principles of Brady v. Maryland, 373 U.S. 83 (1963), and Agurs v. United States, 427 U.S. 97 (1976).

In opposition to the motion the government has submitted a letter from Lawrence H. Sharf, dated December 23, 1982, addressed to this court, enclosing copies of his letter dated November 23, 1982, addressed to the clerk of the circuit court, a copy of a letter from William C. Hendricks III, prosecutor of the MacDonald case, dated August 26, 1981, addressed to this court, a copy of the government's brief to the court of appeals on Thompson's appeal from denial of the motion for a new trial, and a portion of the Senate Select Committee's final report.

After careful consideration of the papers submitted, the court denies defendant Thompson's motion to supplement the record on appeal.

The central focus of all the new materials sought to be added to the



record is the MacDonald case. MacDonald was indicted for bribery, but died before his case came to trial. Defendant's position is that MacDonald was innocent, that his indictment was contrived by the government in order to protect the overall Abscam investigation, and that Weinberg connived with Errichetti in order to dupe both MacDonald and the FBI. Even assuming the truth of all of Thompson's present claims about the MacDonald case, including the claim that Weinberg and Errichetti shared the MacDonald bribe money, the connection with Thompson's guilt or innocence is tenuous.

Thompson argues that Weinberg's conduct with Errichetti in the MacDonald matter would be probative evidence that Weinberg engaged in similar activities with Criden in connection with Thompson's

conspiracy to commit bribery as well as the actual bribery of Congressman John Murphy, for which Thompson was convicted as an aider and abettor.

In fairness to defendant, it should be noted that on many of the requests for discovery made by this and other Abscam defendants, particularly in connection with the due process hearings, the court adopted as a rule of thumb the principle that unless clearly and directly related to particular issues pending before the court, matters generally bearing upon the MacDonald case, which at that time had not yet been indicted, were not discoverable. Consequently, much of the material to which defendant Thompson now refers was not available to him at the trial. Had it been so, however, and had it been offered in evidence on the theories now

advanced by defendant Thompson, the court would have sustained an objection by the government under Rule 403. Its probative value as a "similar act" is small. The two briberies involved different people, the only common factor being Weinberg himself. The evidence does not bear directly on the guilt or innocence of defendant Thompson. Its strongest effect would relate to Weinberg's credibility, but in the context here, it would have little significance when compared to the many other factors brought out at the trial which undercut Weinberg's credibility. Furthermore, the guilt or innocence of Thompson did not in any significant way hinge upon the jury's believing Weinberg's testimony.

On the other side of the Rule 403 scale, the low probative value of the

"newly discovered evidence" is substantially outweighed by the dangers of confusion of the issues and waste of time. In order to fully present the claim about MacDonald that Thompson now advances, it would have been necessary to try the entire MacDonald case, a prospect which would have involved many days if not weeks of testimony, and which would have involved a large number of additional tapes. Thus, even assuming the truth of the evidence, had it been offered at trial this court would have excluded it under Rule 403.

The "evidence" itself, however, is not strong. As to the merits of the case against MacDonald, the particular documents sought to be added to the record are largely statements submitted to congressional investigating committees by interested attorneys seeking to

justify their own or their clients' positions in the matter, together with the senate committee's interim report. The final report of the senate committee, which was released two days before Thompson made the present motion, shows that the select committee changed its position about MacDonald dramatically from the original tentative conclusion of counsel. They noted that the arguments advanced by Plaza, Weir and Walder "were so emphatic, that, when combined with a preliminary and incomplete review of the confidential FBI and Department of Justice Abscam files, they caused the select committee's counsel in their interim report on August 18, 1982 to suggest that there was substantial evidence that Errichetti had duped MacDonald." Final Report, Allegations Regarding Kenneth N. MacDonald, at 2. After re-

viewing a great deal more evidence, the select committee concluded in its final report "that the weight of the evidence shows that MacDonald knowingly attended the March 31, 1979 meeting with the intent of using the influence of his public office for the purpose of enabling his companion Angelo Errichetti to obtain a payment of \$100,000 and for the further purpose of obtaining either an immediate or a future benefit for himself. The select committee rejects the contention that the government had improper motives in indicting MacDonald." Id. at 3.

As to Weinberg's sharing the bribe money, the committee's final report concludes that he did so with respect to MacDonald and probably on at least two other occasions. But as pointed out by this court on previous

occasions, Weinberg's honesty and credibility are not issues which bear directly on the guilt or innocence of the congressional Abscam defendants. It is the possible minimal relevance of the "similar act" claim now made by Thompson that warrants consideration on this motion, and as already indicated its probative value is substantially outweighed by considerations of delay and waste of time.

The court has no way of identifying the document referred to in the motion papers as "government document BQ87-81067." It is not described in the moving papers, and the court has no record of it. Consequently, this decision does not address itself to that particular document.

Accordingly, the motion to supplement the record on appeal from

denial of defendant's motion for a new trial is denied.

SO ORDERED.

Dated: Uniondale, New York  
December 28, 1982.

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GEORGE C. PRATT  
U.S. CIRCUIT JUDGE\*

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\*Of the United States Court of Appeals for the Second Circuit, sitting by designation.



UNITED STATES COURT OF APPEALS  
SECOND CIRCUIT

At a stated term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse, in the City of New York, on the twenty-eighth day of July, one thousand nine hundred and eighty-three.

-----:  
UNITED STATES OF AMERICA, :  
Appellee, :  
v. : No. 82-1271  
FRANK THOMPSON, JR. :  
Defendant-Appellant.  
-----:

A petition for rehearing containing a suggestion that the action be reheard in banc having been filed herein by counsel for the defendant-appellant, Frank Thompson, Jr.,

Upon consideration by the panel that heard the appeal, it is

Ordered that said petition for rehearing is DENIED.

It is further noted that the suggestion for rehearing in banc has been transmitted to the judges of the court in regular active service and to any other judge on the panel that heard the appeal and that no such judge has requested that a vote be taken thereon.

A. Daniel Fusaro, Clerk  
by: Deputy Clerk

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA :

v.

Docket #:

FRANK THOMPSON, JR.,  
Defendant-Appellant

82-1271

-----;

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PETITION FOR REHEARING WITH  
SUGGESTION FOR REHEARING EN BANC  
-----

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Appellant Thompson

PETITION FOR REHEARING

It is respectfully suggested that the panel opinion totally overlooked part of defendant's pretrial discovery motion and, as a result, misapplied the holding in United States v. Agurs, 427 U.S. 97 (1976), delineating the circumstances under which violations of the doctrine of Brady v. Maryland, 373 U.S. 83 (1963), require the granting of a new trial to a criminal defendant because of the concealment of exculpatory evidence in the possession of the prosecution. In ignoring a crucial part of defendant's discovery motion, the panel opinion denied Petitioner a new trial even though he demonstrated the existence of newly discovered exculpatory evidence which had been concealed from him prior to trial despite a specific request for the exact evidence which,

it now turns out, was in the prosecutor's files at the time. The opinion is substantially inconsistent with Perkins v. Le Fevre, 691 F.2d 616 (2d Cir. 1982).

Furthermore, the panel opinion "overlooked or misapprehended" a crucial principle in the application of the Federal Rules of Evidence when it held that the trial court had the discretion to exclude clearly exculpatory evidence at a new trial because of a vague and unsubstantiated fear that admission would result in confusion and delay.

- A. The Oversight of Defendant's Pretrial Motion for the Production of "Information referring or Relating to or... Reflecting Any...Suspected Violations of Federal or State Law by Melvin Weinberg."

As set forth in the panel opinion, Joseph DiLorenzo, the nephew and chauffeur of ABSCAM defendant Angelo

Errichetti, gave information to the FBI on June 10, 1980, which was "probative" of the claim that Weinberg had received as a kickback a substantial part of an alleged bribe payment to another ABSCAM target, Kenneth MacDonald. (Slip Opinion at 4502. Hereinafter Op. at \_\_\_\_).

On June 23 and again on July 10, 1980, subsequent to DiLorenzo's FBI interview, the Thompson defense requested production by the prosecution of

any documents, tangible objects or other information, relating to or relating to or constituting, containing or reflecting any violations or suspected violations of federal or state law by Melvin Weinberg during the period of time he has been an informant or instrumentality or person assisting any agency of the government, including but not limited to the FBI. 1

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1. Appeal Brief for Appellant,  
at p.8.

Despite this clear and specific request (which is completely overlooked in the panel opinion of June 14, 1983), the prosecution failed to inform the Thompson defense that it had "information" (DiLorenzo's June 10 statement) reflecting a possible violation of Federal law by Weinberg (to wit, that he had shared in the ABSCAM "bribe" payments and, in so doing, had defrauded his government employers).<sup>2</sup>

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2. The DiLorenzo statement was not the only reason the government had for suspecting that Weinberg was involved in a double scam and might be actually framing MacDonald. According to the counsel to the Senate Select Committee on ABSCAM, "A document in the FBI files shows that on December 20, 1979, Errichetti told an FBI informant that MacDonald would not and did not take any money from Errichetti." Interim Report (Exhibit B to Appellant's main Appeal Brief) at 20-21.

Under the standard set forth in United States v. Agurs, 427 U.S. 97 (1976), this failure of the prosecution to disclose material exculpatory evidence in response to a specific request requires a new trial for the defendant if the undisclosed evidence "might have affected the outcome of the trial." 427 U.S. at 104. Indeed, as emphasized in Agurs, the prosecutor's failure to respond to such a request is "seldom, if ever, excusable." 427 U.S. at 106.<sup>3</sup>

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3. There can be no question that defendant Thompson's request was "specific." The request did not call for "all Brady material" or "anything exculpatory." Such requests are understandably suspect. Ostrer v. United States, 577 F.2d 782 (2d Cir. 1978). They are termed unspecific because they provide no notice to the prosecution as to what information is required.

However, Thompson's request named a specific witness and the specific information regarding that witness which the prosecutor should have forwarded.

By overlooking defendant's specific pretrial request for information concerning possible law violations by Melvin Weinberg, the panel opinion came to the erroneous conclusion that the prosecution's failure to disclose

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(Footnote 3 continued from preceding page)

Other Circuits have viewed defendants' requests which were far less specific than this and determined that those requests gave effective notice to the prosecutor. Chavis v. State of North Carolina, 637 F.2d 213 (4th C r. 1980) (requesting "scientific or medical data which might affect the credibility or competence of any witness"); Jones v. Jago, 575 F.2d 1164 (6th Cir. 1978), cert. denied, 439 U.S. 883 (requesting "all exculpatory statements" which might have been given by a witness for the state); United States v. Goldberg, 582 F.2d 483 (9th Cir. 1978), cert. denied, 440 U.S. 973 (requesting "any written or recorded statements made by defendants or by any alleged co-conspirators not charged herein", or "any other statements made by government witnesses."

These cases demonstrate that specificity is to be judged by how much notice a request provides to the prosecutor. Clearly, Thompson's request could not have created any confusion; it labeled the exact subject-matter and source of the information.



DiLorenzo's allegations about Weinberg's alleged double-dealing "does not trigger scrutiny of Thompson's new trial claim under either of the strict standards of Agurs that apply to knowing use of perjured testimony and failure to produce specifically requested exculpatory evidence." (Op. at 4503, emphasis added). Instead, the Court apparently applied the test set forth in Agurs for new trial applications based on the prosecution's failure to disclose information which was either not the subject of a discovery request at all or was included, at best, within a general request. That part of the test requires the defendant to demonstrate that if the evidence had been presented to the jury it "would likely have led to an acquittal." (Op. at

4500.)<sup>4</sup>

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4. The panel opinion tested the specificity of the DiLorenzo statement only against a separate pretrial discovery request of defendant seeking information concerning payments by the government to or for the benefit of Melvin Weinberg. As to that request, the court concluded that "it was entirely appropriate for the prosecution to understand this request as focusing on benefits from the government" and not encompassing government payments received by Weinberg as "a kickback from Errichetti." (Op. at 4505). Petitioner believes the panel's treatment of even that discovery request was erroneously grudging. As defense counsel stated at oral argument, when the defendant sought information on government payments to Weinberg, it didn't matter whether those payments had been made directly, had been deposited in a Swiss bank account opened in Weinberg's name, or had been given to the tooth fairy to put under Weinberg's pillow. Or, as was apparently the case, whether the government merely closed its eyes to evidence that Weinberg was surreptitiously sharing in the so-called bribe payments. In any of those events, the prosecution was obliged to inform the defense in response to a discovery demand concerning Weinberg's receipt of government benefits. But whether or not the panel erred as to the specificity of the request for information concerning payments to Weinberg, there surely can be no doubt that there was a "specific" request for information concerning suspected violations of law by Weinberg.

Whether or not it can confidently be asserted that the information concerning Weinberg's sharing in the "MacDonald payoff" would "likely have led to an acquittal" if presented to a Thompson jury, it cannot be confidently concluded that the evidence might not "have affected the outcome of the trial." And it is the latter standard by which the non-disclosure of Weinberg's double-dealing role must be tested under Agurs.

No one who has carefully examined the record of the Thompson trial could reasonably conclude that it could not have "affected the outcome of the trial" if the jury had been presented evidence that in a similar payoff scenario, Mel Weinberg had been involved in a scam-within-a-scam to share some of the payoff money with a middleman (in that instance,

Errichetti). Since Frank Thompson's defense was that he never received any of the money and was unaware of a bribe scheme, it would have been of obvious assistance to that defense if he could have pointed out to the jury that in one of the other "payoffs", ABSCAM mastermind Mel Weinberg may have diverted the so-called bribe payments to himself.<sup>5</sup>

In testing the potential jury impact of the information in the DiLorenzo

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5. The affidavit of Thompson's trial counsel, Daniel Rezneck, asserts that information that Weinberg had shared in the MacDonald payoff would have provided a "significantly stronger basis" for his preferred scam-within-a-scam defense, a defense he abandoned because of Weinberg's insistence at earlier ABSCAM trials that he had not shared in payoff money and the prosecution's failure to reveal that it had information that Weinberg may have been lying. (a-25).

statement against the less-stringent no-request Agurs standard, the panel opinion said the kickback allegations were too attenuated to lead to a conclusion that they would "likely have led to an acquittal." But the panel opinion never tested the concealed information against the stricter Agurs standard that it "might have affected the outcome of the trial."<sup>6</sup>

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6. The panel opinion's skepticism about the impact the MacDonald scenario would have on a Thompson jury is bolstered by improper reliance on untested conclusions of the Senate Select Committee on ABSCAM, which made no claims of applying a reasonable-doubt standard. The opinion asserts that even if Weinberg did share in the "MacDonald payoff", that "does not show that MacDonald did not receive some of that money, and it leaves entirely to conjecture the claim that MacDonald was duped, a conclusion the Select Committee firmly rejected." (Op. at 4502-03). While it is true that the final report of the Select Committee differed with the Interim Report of its Counsel as to MacDonald's culpability, neither of those findings could bind a jury. What they do demonstrate is that reasonable minds

Such a test was employed by another panel of this Circuit in Perkins v. Le Fevre, 691 F.2d 616, where the defense had requested that the prosecution turn over the criminal records of any witness the prosecution intended to call at trial. Apparently as a result of some confusion over the proper identity

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(Footnote 6 continued from preceding page)

could differ as to whether or not MacDonald was an innocent dupe of a Weinberg "scam-within-a-scam." And if reasonable minds, viewing the MacDonald facts might conclude that he had been duped, it also "might have affected" their assessment of the Thompson case as well.

The panel opinion's further assertion that whether or not Weinberg actually received a kickback of the MacDonald payment is "itself a matter of sharp dispute" (Op. at 4503) is totally without support. Even the final report of the Select Committee concluded "it is likely" that Weinberg shared in ABSCAM payoffs. (Final Report at 152).

of a prosecution witness, the rap sheet was not turned over until several days after the trial. This Circuit held that the failure to timely provide the witness' rap sheet had corrupted the truth-seeking function of the trial and resulted in a denial of due process to the defendant. Id. at 620. .

The Perkins opinion emphasized that once the prosecutor fails to respond to a specific discovery request, "the conviction must be set aside if 'the suppressed evidence might have affected the outcome of the trial,'" Id. at 619, quoting from Agurs, 427 U.S. at 104. Again quoting Agurs, the Court noted that the basis for affirmatively responding to a specific defense request is whether "a substantial basis for claiming materiality [of the requested information] exists." Ibid. The Perkins

Court further advised that:

These principles apply both to materials going to the heart of the defendant's guilt or innocence and to materials that might well alter the jury's judgment of the credibility of a significant prosecution witness. (Ibid.).

The Court concluded that since "'the jury might well have assessed Jones's credibility in a different light' had it known of his dishonest testimony and his past convictions for dishonest acts," Perkins was entitled to a new trial under Agurs. Id. at 619-20.

Since the Thompson jury might well have assessed Thompson's credibility more favorably had it known that Mel Weinberg had been double-dealing and possibly duping another ABSCAM defendant, he is also entitled to a new trial because of the prosecution's failure to respond to his specific request for



information concerning Weinberg's suspected violations of law, which would have revealed that Weinberg was probably diverting some of the ABSCAM "payoffs" to himself.

\* \* \*

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	
	:	Cr. No.
v.	:	80-00291
FRANK THOMPSON, JR.,	:	(Mishler, J.)
<u>et al.</u> ,	:	
	:	
Defendants.	:	

MOTION OF DEFENDANT  
FRANK THOMPSON, JR. FOR PRODUCTION  
OF DOCUMENTS AND OTHER MATERIALS

Defendant Frank Thompson, Jr., moves, in accordance with Rule 16 of the Federal Rules of Criminal Procedure, the Due Process Clause of the Fourteenth Amendment, the doctrine of Brady v. Maryland, 373 U.S. 83 (1963), 5 U.S.C. §§ 552 and 552a, and the inherent power of the Court to order discovery and supervise pretrial proceedings, for an order requiring the government to produce forthwith for copying and inspection the documents and other materials contained in the letter request to the

prosecution on Congressman Thompson's behalf of June 23, 1980, a copy of which is attached as Exhibit A to the accompanying memorandum.

The grounds for the motion are set forth with particularity in the accompanying memorandum of points and authorities.

Respectfully submitted,

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277 Park Avenue  
New York New York 10017  
(212) 826-0820

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Daniel A. Rezneck  
Clifford D. Stromberg  
Robert N. Weiner  
ARNOLD & PORTER  
1200 New Hampshire Avenue,  
N.W.  
Washington, D.C. 20036  
(202) 872-6776  
Attorneys for  
Frank Thompson, Jr.

\* \* \*

(24) All documents, tangible objects, and other information relating or referring to Melvin Weinberg, including but not limited to:

\* \* \*

(e) any payments, compensation, gifts, fees, or any other things of value given to or for the benefit of Melvin Weinberg;

(f) any documents, tangible objects, or other information referring or relating to or constituting, containing, or reflecting any violations or suspected violations of federal or state law by Melvin Weinberg during the period of time he has been an informant or instrumentality or person assisting any agency of the government, including but not limited to the FBI.

\* \* \*

CR 80-340

RICHARD KELLY, EUGENE :  
ROBERT CIUZIO, and  
STANLEY WEISZ,  
Defendants.

COUNTY OF PALM BEACH )  
 ) ss:  
STATE OF FLORIDA )

Cynthia Marie Weinberg, being duly,  
sworn deposes and says

1. I am married to Melvin Weinberg. I am a resident of the State of Florida and I will disclose my home address to the Court in camera. The reason for my refusal to place my address in this affidavit is my fear that I shall come to harm if my home address is known.

2. Prior to our move to the State of Florida where I presently reside, my husband, my son, J.R., and I lived at 131 Split Cedar Drive, South Hauppauge, Long Island, New York. This was during the period of the ABSCAM investigations.

3. After my husband began to work with the FBI in these investigations a number of FBI agents would visit my home from time to time. They included John Good, Anthony Amoroso, Jack McCarthy, Tom McShane and others. They spent time in my home socializing with my husband and myself and they knew the layout of our house. Sometime in 1978 or 1979 my husband, Mr. Weinberg, brought home three Sony Trinitron television sets with 17" screens. He said that they were a gift from a friend. He also brought home an entire stereo system, including two speakers and a wooden case

with a glass magnetic door and two shelves and in the same year he brought home a Betamax video recorder. He also brought home a microwave oven.

4. My husband told me that all of these were "gifts" from a "friend."

5. In 1980, during one of the ABSCAM trials my husband called me, very excited and asked me to move the microwave oven and the video recorder out of our house to a place where no one would know their whereabouts. He cautioned me that no one should see me moving this equipment. My son, J.R. and I moved the microwave oven and the video recorder to a condominium apartment nearby which was vacant and to which I had the keys. Those two items stayed in that condominium for several weeks until my husband called me and told me to bring them back to my apartment. With regard to the

microwave oven my husband, in my presence, removed the serial numbers one night and he did this with a screw driver which he asked me to get for him and I watched him remove the serial plate from the microwave oven.

6. Prior to the foregoing correspondence and while we were still at our Long Island home the following agents visited our home and saw the microwave oven; the audio equipment complete with speakers; the Betamax video recorder and the three Sony TV's were in boxes in the garage. When the time came for us to move to Florida, Special Agent John Good was very helpful; he brought packing boxes and tape for us to pack these items for shipment. Mr. Amoroso sealed the crates after the items were packed and he did a good deal of that work until he received a telephone



call from his mother that day that his father had passed away. Thereafter, Mr. Amoroso left the house.

7. At about the same time my husband decided that we would not take a good deal of the furniture and other items with us so he gave to Mr. Amoroso two bedroom suites and a number of Mr. Weinberg's sport jackets and other clothes; he gave to Mr. Good and Special Agent Amoroso the living and dining room suites complete with crystal table lamps. He gave to "Carol" who was working as a secretary in the ABSCAM office a car load of books; he also gave to Mr. Amoroso five cases of books.

8. At that time. Mr. Jack McCarthy, Special Agent of the FBI, expressed an interest in our Thomas organ which was worth about \$4,000. Mr. Weinberg gave the organ to Mr. McCarthy and I have

no knowledge as to whether Mr. McCarthy paid him anything for it. In addition, Special Agent Tom McShane wanted my Persian lamb coat for his mother and my blue fox coat for his wife.

Mr. Weinberg gave those items to Mr. McShane and I do not know what, if anything, Mr. McShane paid for them.

The reason I gave up those coats is that Mr. Weinberg told me I certainly would not need fur coats in Florida. In addition to the foregoing we had a stereo shelf case on rollers which was to be used for the placement of the stereo equipment I have described above. Mr. Weinberg gave that to John Good.

9. Sometime between the end of 1977 and the beginning of 1978, I drove my husband, Mr. Weinberg to a meeting with Mr. Angelo Errichetti, the Mayor of Camden at the Holiday Inn off the

Long Island Expressway. I drove him in my Mark IV Continental. Mr. Weinberg told me to park the car on the side of the road. He said he would just be a short time and he had to pick something up from Mr. Errichetti. He returned to the car sometime thereafter carrying a briefcase and sat down with me patting the briefcase and saying "forty-five."

I know that Mr. Amoroso, who was supposed to be watching my husband didn't know about this because my husband told me he had "ducked" him. I had met, in the company of my husband and my son J.R., Mayor Errichetti before. My son was there on one such occasion but there were several occasions of that nature and on one such occasion, I was introduced to Mayor Errichetti as Mr. Weinberg's "sister-in-law."

10. On another occasion, after we moved to our Florida home, there were forty-four odd recorded tapes collected on my kitchen counter in my Florida home. One day, two FBI agents, one named Gunnar Askeland and another came to collect the tapes. Since they were difficult to carry I gave them a plastic lawn bag which they put in the trunk of a car. A month or so later the agents called me and asked for the tapes and I told them I had given them to them. I don't know whether they ever found the forty-four tapes. In November 1981, I learned that my husband, Mr. Weinberg, had purchased another condominium in Martin County, Florida, where he was living with Evelyn Knight. Thereafter I learned that she had secured a court order to change her name to Evelyn Dawn Weinberg. Subsequently, my son J.R.

visited that condominium and told me that my husband had bought three additional Sony TV sets, one of which has a white cabinet and the other two are dark cabinets. I understand that my husband purchased another video recorder for Ms. Knight's establishment. The source of my information for the three Sony television sets and the video recorder in that condominium is my son J.R. who saw them and described them to me. In or about November of 1979, after I found out that my husband was living with Evelyn Knight in Martin County, I called Bob Green of Newsday whom I had met and who wrote the book about my husband entitled "The Sting Man." I told Mr. Green that I had found the black book meaning the 1980 diary of my husband. Mr. Green told me that that book was very dangerous and that "they would kill

for that." He further asked me to put in it a vault and I told him I would not. Later on, because of fear, I burned the diary. Mr. Green, however, has in his possession, according to his statement to me, Mr. Weinberg's 1978 and 1979 diaries.

11. I have been speaking to Mr. Indy Badhwar of Jack Anderson's office about these matters since early November 1981. Thereafter, I spoke with him again on November 7, 1981, November 20, 1981 and on November 22, 1981, I personally met with Mr. Badhwar at West Palm Beach, the Holiday Inn. It was on that date that I confirmed the meetings with Errichetti, above described, the receipt of the microwave oven by my husband in New York and the gifts of furniture to the FBI agents. On November 24, 1981, I had

another telephone conversation with Mr. Badhwar and I elaborated further on the above matters. On January 5, 1982, I had another conversation with Mr. Badhwar in which I told him that my husband appeared to know all about his conversations with me and that my husband was threatening me. On January 7, 1982, I had yet another conversation with Mr. Badhwar and told him to bring his cameras so he could photograph the items above mentioned which were in my home. I also told him that John Good was calling and trying to see me. Thereafter, on January 7, when Mr. Badhwar had arrived at the Jupiter Hilton Hotel in West Palm Beach I had a conversation and told him that John Good had called me again and was trying to see me and talk to me. On January 8, 1982, I spent all day until 3:00 a.m. the next day with Mr. Badhwar

and part of that day until 3:00 a.m. with Richard Bast, an investigator for Mr. Dennis. Parenthetically, on January 7, 1982, I told Mr. Badhwar that I was very fearful of my husband, the FBI and others who might try to do injury to me or my son because of my talks with Mr. Badhwar and he suggested that I secure a lawyer. He gave me the name of Michael F. Dennis and I spoke to Mr. Dennis on the long distance telephone, explained that I wanted him to represent me in this matter and he agreed to do so without fee. He instructed me to speak with no one except Mr. Badhwar or Mr. Bast or any person they introduced me to and that if any other persons wanted to speak with me I was to refer them to his office.

12. When I returned to my home in the early morning of January 9, I



learned from my next door neighbor that a group of FBI agents, numbering between six and eight agents, had come to the front of my condominium at midnight and they had remained there until after 2:00 a.m. My neighbor went out and asked them who they were and what they were doing and they responded that they were FBI agents and that my condominium was under FBI surveillance.

13. On the early morning of January 9, at approximately 7:00 a.m., Mr. Badhwar, Mr. Bast and Gordon Freedman, a producer for ABC Television, came to my home and took videotapes of me pointing out the microwave oven, the video recorder, the three Sony television sets, the Harman Kardan receiver and the other equipment above described that my husband said were "gifts" to him from a "friend." After Mr. Badhwar and Mr. Freedman left

my condominium that day I remained with Mr. Best for a short time when two FBI agents came to the door. They identified themselves as Joseph Smith, FBI. No. 8190 and Ivan Ford, FBI No. 9537 and stated to me they wanted to discuss allegations of FBI misconduct and for me to show them any documentary evidence that I had. They were told that if they wanted to speak to me they would first have to get my attorney's consent and I gave them his name and phone number.

14. I make this affidavit because I feel my husband committed perjury with the knowledge of the FBI which injured a number of innocent people and I want the truth to be known. I will be glad to testify under oath in any court as to the truth of the

foregoing.

Cynthia Marie Weinberg

Subscribed to before me this  
16 day of January, 1982

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Jeanette A. Wrinn  
Notary Public  
Notary Public State of Florida at Large  
My Commission expires Oct. 24, 1985  
Bonded thru General Ins. Underwriters

1-26-62

The only one who can forgive me is God

I cannot live with the knowledge of the lies and deceit perpetrated by one person - the lies of the people affected by the deceit. I cannot forget only all of these things were done - I know that is a higher power.

My son was wanting to live and be loved. Nothing more - but the campaign is being made by Mel to discredit me - I have no the strength to fight him anymore - so by this act it will add evidence to anything he says - so he it -

Everything that I have attested to has been the truth - the affidavit and conversations with Harold Friedman - only Badlmer - Richard Lee Best & Michael F. Dennis as God is my witness.

Mel has threatened me with - taking my son from me - he will declare me a pervert. This was his own government - the one thing I could never fear. I can't live with this knowledge - that I could lose him - he is my life - I can live with 14 years of deceit from Mel - but not the loss of my son - the only beautiful thing in my life.

What I am about to do is cowardly - call it what you will - but may be - I had done something up earlier it may have changed things - The guilt is too much - know me

UNITED STATES OF AMERICA :  
 :  
 v. : No. CR-80-00291  
 :  
 FRANK THOMPSON, JR., :  
 et al., :  
 :  
 Defendants. :

CITY OF WASHINGTON, )  
 ) ss.:  
DISTRICT OF COLUMBIA)

1. I am a partner in the firm of Arnold & Porter, 1200 New Hampshire Avenue, Washington, D.C. 20036. I was one of the attorneys for Frank Thompson, Jr., a defendant in Criminal No. 80-00291, a case tried before the Court in November and December, 1980. Mr. Thompson was convicted on three counts of the indictment in December, 1980, and was provisionally

sentenced under 18 U.S.C. § 4205(c), in August 1981. His appeal from his conviction is presently pending before the United States Court of Appeals for the Second Circuit.

2. I have read the affidavit of Marie Weinberg, dated January 16, 1982, the affidavit of Indy Badhwar, dated January 18, 1982, and the exhibits thereto, and the other exhibits attached to the motion for a new trial filed in another of the ABSCAM cases in this Court, United States v. Myers et al., Criminal No. 80-00249. I have also read the motion to reopen the due process inquiry and the attached exhibits in another of the ABSCAM cases, United States v. Kelly, Criminal No. 80-340, in the United States District Court for the District of Columbia.

3. These materials assert in sub-

stance that:

(i) Melvin Weinberg, a witness for the prosecution in the case of Mr. Thompson, perjured himself in his testimony at various ABSCAM court proceedings with respect to such matters as the receipt of gifts from targets of the ABSCAM investigation;

(ii) Agents of the Federal Bureau of Investigation were aware of Melvin Weinberg's receipt of these gifts and of his perjured testimony in ABSCAM court proceedings with respect to these matters;

(iii) Melvin Weinberg maintained an answering machine on the telephone in the Florida home of Melvin and Marie Weinberg during the ABSCAM investigation and recorded messages from ABSCAM targets and others which were provided to agents of the FBI by Mrs. Weinberg. The existence

of these tapes turned over by Mrs. Weinberg was not disclosed to the defendants in any of the ABSCAM cases:

(iv) Melvin Weinberg received kickbacks from targets of the ABSCAM investigation, apparently paid out of bribe money allegedly turned over to targets of the investigation. In particular, Melvin Weinberg is alleged to have received substantial sums of money from Mayor Errichetti as a kickback from an alleged payoff in a transaction in which Mayor Errichetti was the "middleman."

4. None of these matters was disclosed to the defense in the present case. Melvin Weinberg consistently denied the receipt of gifts or kickbacks during his testimony in ABSCAM cases, and agents of the FBI denied knowledge of any such receipt during ABSCAM proceedings, in-



cluding the due process inquiry conducted in the present case.

5. In the course of preparation of the defense of Mr. Thompson in the present case, we developed the theory of a "Scam within a scam" relating to the conduct of and relationship between Melvin Weinberg and codefendant Howard Criden, who was the "middleman" in the transactions allegedly involving Representatives Thompson and Murphy. In essence, the theory was that Messrs. Weinberg and Criden were working together to obtain money from the persons who were later disclosed to be undercover operatives of the FBI, and to divide the money between them, rather than turning it over to the targets of the investigation. The theory was that the Congressmen were victims of the "Scam within a scam" being practiced in concert by Messrs. Weinberg and Criden. A memorandum setting forth this

theory in detail, prepared contemporaneously with the Myers trial and prior to the Thompson-Murphy trial, is attached hereto as Exhibit A. A second memorandum by another attorney in the firm of Arnold & Porter who was working on the Thompson defense and further elaborating the "Scam within a scam" theory is attached hereto as Exhibit B.

6. This theory was not propounded on Mr. Thompson's behalf at his trial. Weinberg at the Myers trial denied the receipt of gifts or kickbacks from targets of the ABSCAM investigation. The Myers case resulted in a conviction of all defendants. In view of Weinberg's steadfast denial of receipt of gifts or kickbacks and the unsuccessful efforts of the defense in the Myers case to secure an acquittal of their clients through an attack on Weinberg's veracity and credibility, the Thompson

defense in the Thompson-Murphy case did not rely on the "Scam within a scam" theory as to Weinberg. The defense of Mr. Thompson did attempt to show that Criden was engaged in an effort to scam both Representatives Thompson and Murphy on the one hand and the government undercover operatives on the other. That was a different theory from the "Scam within a scam" involving both Weinberg and Criden, and Criden was not a witness for the prosecution although Weinberg was.

7. The information contained in the materials submitted to this Court and the U.S. District Court for the District of Columbia (referred to in Paragraph 2) would have supported the "Scam within a scam" theory elaborated in the attached memoranda. If it had been disclosed to the defense prior to the Thompson-Murphy trial, there would have been a signif-



EXHIBIT A

August 19, 1980

MEMORANDUM

TO: Files

FROM: Dan Rezneck

"Scam within a scam" theory would be as follows:

1. Weinberg first set out to scam the government out of a jail sentence. He had been sentenced to three years and he succeeded in receiving probation by proposing ABSCAM.

2. Then he set out to scam the government out of a lot of money, which he did. He received payments on the order of \$100,000 to him and got periodic raises, some of them retroactive.

3. Then he scammed the government into maintaining him in a style to which he had become accustomed -- limousines, private planes, fancy hotels, boats, Florida

and New Jersey condominia, prostitutes (see one of the Silvestri tapes at Atlantic City during the League of Cities convention).

4. Then he sought kickbacks and gifts from the people he was dealing with -- e.g., Errichetti, Criden.

5. The whole object was to get as much out of the government as he could. ABSCAM money was flowing back to Weinberg in the form of kickbacks.

6. Thompson was a pigeon on all of this.

Criden and Weinberg were working together to extract money from what Criden thought was the sheik's treasury and Weinberg knew to be the government's treasury. Money was being paid for the delivery of Congressmen so long as the proper ritual was performed and the bag could be passed to Criden, to be split

with Weinberg and others.

7. Thompson was a victim in all of this. He had no idea what was going on and did not understand the significance of what was being said or done to him.

One of the most expressive gestures on the tapes is when Weinberg at the end of the first tape throws his hands up and looks at Criden. They are obviously unsuccessful in getting Thompson to bite, DeVito has disapproved the deal, and Criden is not going to be able to walk out with the money either to keep it or to share it with Weinberg.

8. One might also note the statement by Criden on the Murtha tape in which he said to DeVito: "What did we do wrong?" Who are the we here?

9. Also there are the various efforts by Criden to suggest that Weinberg and DeVito should share in the money and

ripoff the sheik whom they are supposedly representing.

Everyone is trying to ripoff everyone else at the expense of people like Thompson who do not know what is going on.



## EXHIBIT B

August 28, 1980

MEMORANDUM

TO: Thompson Files

FROM: Robert N. Weiner

RE: Further Thoughts on Scam within a  
Scam Theory.

In a conversation on Tuesday, October 2, 1979 (1326), Criden tells Weinberg that Jim Howard does not want any mention made of money. Criden says that Howard is liable to tell Weinberg "in case anybody is wiring him" that he doesn't want anything in return for helping them. In a conversation on October 3, 1979 (1329), Weinberg rejects this suggestion. He says that they want it understood so they can go to Yassir and say "well this is what the guy told us he can do." Weinberg says that when you start dealing as Criden has proposed, the Congressman could turn around and say

"I never did this." Weinberg would rather have an understanding. He says that he is willing to sit in his underwear in the room if the person wants it, presumably so that the Congressman would be assured that he was not wired.

If Weinberg, supposedly after consulting DeVito, was unwilling to forego any mention of money in the Howard meeting, why did he change his mind with regard to Thompson on the very next day? Note further that in the first interim tape, Weinberg states that he did not tell DeVito about this particular ground rule. Does this support the thesis that Criden and Weinberg were attempting a scam on the Thompson transaction? We should, in any case, try to find out the reason for this difference in treatment.

August 18, 1982

REPORT TO THE SELECT COMMITTEE  
OF THE REVIEW BY ITS COUNSEL  
OF THE CONFIDENTIAL ABSCAM FILES  
OF THE FEDERAL BUREAU OF INVESTIGATION

## I.

INTRODUCTION

On June 17, 1982, the Select Committee and the Department of Justice reached an agreement whereby members of the Committee and counsel to the Committee were given access to most of the confidential documents generated during the covert stage of the undercover operation known as Abscam.\*

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\* Documents to which members of the Committee and counsel have been denied access include all prosecution memoranda; all grand jury material; all portions of Melvin Weinberg's informant file pertaining to Weinberg's pre-Abscam activities; documents prepared or compiled by the Office of Professional Responsibility of the Department of Justice pursuant to its investigation of Abscam matters; and documents prepared or compiled by the FBI Office of Professional Responsibility pursuant to its investigation of Abscam matters. In addition, numerous documents pro-

The agreement provides that access is limited to members of the Committee, counsel, and document custodians, and that, while the Committee and counsel may use and publicly disclose information in the documents, the specific document containing particular information may not be publicly identified. The agreement also preserves the Committee's right to seek unrestricted access to all documents, if the Committee concludes that the limited access is insufficient to enable it to

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vided to us were redacted. We have no precise knowledge concerning the contents of the redacted portions of documents or of the contents of most of the documents withheld from us. We are continuing to negotiate with the Department of Justice in an effort to obtain access to these documents. An effort to compel production through subpoenae and litigation would undoubtedly require a substantial extension of the deadline for filing the Select Committee's final report to the Senate, which Senate Resolution 350 specifies as December 15, 1982.

perform its assigned tasks.

\* \* \*

## VII.

### MANAGEMENT, DIRECTION, SUPERVISION AND CONTROL OF UNDERCOVER AGENTS, EMPLOYEES, AND INFORMANTS IN ABSCAM

Weinberg, who had been an FBI informant between 1969 and 1976 and had been closed out as an informant in late 1976 or early 1977, was reopened as an informant by the FBI's Brooklyn-Queens Field Office in mid-1977, shortly after having pleaded guilty in federal court in Pittsburgh to ten counts of mail fraud. We found no document reflecting a consideration of Weinberg's suitability as an informant under the Attorney General's FBI Guidelines for Use of Informants, which were then in effect; nor did we find any document reflecting what we were told by FBI officials: that Weinberg was closed down as an informant because the

FBI discovered during the pre-Abscam period he had been engaging in illegal activities while operating as an informant. The files do not contain any document mentioning the risk involved, or any special procedures to be followed, in using an informant who has recently been found to have been conducting his own illegal activities while serving as an FBI informant.

The documents also do not expressly describe the measures taken to manage, direct, supervise, or control either the undercover agents or the informant; but they do reflect that Weinberg's activities were monitored in several ways. FBI undercover agents attended many of the meetings between Weinberg and middlemen. Undercover agents attended and directed each of the meetings at which a bribe had been authorized to be offered to a public

official. Prosecuting attorneys and FBI agents had numerous meetings with Weinberg. Approximately one thousand conversations in which Weinberg participated were at least partially recorded and transcribed.

Nevertheless, the files contain substantial evidence that Weinberg managed to deceive the agents and prosecutors and improperly to obtain federal funds. The most serious instances reflected in the documents are as follows:

(1) On January 29, 1979, FBI Agent Margo Denedy's picture appeared on the front page of Newsday and the Philadelphia Inquirer as an agent who had participated in the arrest of a hijacker at JFK Airport. Before that date, Denedy had been one of the Abscam undercover agents.

On February 5, 1979, Weinberg told Agent McCarthy that on January 31, 1979, while in Florida, he had received telephone

calls from middlemen Eden, Errichetti and Rosenberg in which each of those men had claimed he had seen the Denedy picture. Weinberg further told McCarthy that he had convinced each of the middlemen that the person in the picture could not have been Denedy. Agent McCarthy noted that Weinberg's willingness to continue the operation placed Weinberg in great physical danger, because a middleman or other subject might learn that he was working for the FBI.

On February 16, 1979, the FBI's Brooklyn-Queens Office requested a lump-sum payment for Weinberg. The request summarizes Weinberg's recent accomplishments with respect to Rosenberg and Errichetti, including the Denedy incident, and it demonstrates that Weinberg's role in the Denedy incident was an important reason for the bonus request. FBI Head-



quarters approved payment to Weinberg on the specific basis that Weinberg's ingenuity had saved the operation.

On December 17, 1980, and on February 16, 1981, however, Weinberg admitted under oath that Errichetti had never even seen the Denedy photograph and had not discussed it with Weinberg. Thus, Weinberg obtained a bonus on the basis of misrepresentations he made to an FBI agent. Other information that we have obtained and that we are still investigating suggests that every aspect of the story Weinberg told to McCarthy was false, except for the appearance of Agent Denedy's picture in the newspapers.

(2) On January 20, 1979, Agent McCarthy paid Mayor Errichetti a \$25,000 bribe. There is no contemporaneous document showing that the FBI knew or believed that Weinberg met with Errichetti on either

January 19 or January 20. In June 1980, however, Errichetti's nephew, Joseph DiLorenzo, told prosecutors that Weinberg had met with Errichetti at a Holiday Inn on Long Island on January 19, 1979, and on January 29, 1979, after the pay-off had been made to Errichetti, and that at the January 20 meeting Weinberg had been given an envelope. Shortly after the DiLorenzo interview, Weinberg, when asked about the meeting, denied having ever been at the Holiday Inn on those dates. Later in 1980, prosecutors obtained records of Weinberg's telephone charge card, which showed that he had made a call on January 19, 1979, from that motel. These events suggest that Weinberg may have shared in the Errichetti bribe payment and that, at the least, he had attempted to conceal from the FBI meetings he had had with subjects of the investigation.

(3) There is substantial evidence suggesting that on April 1, 1979, the day after a bribe payment of \$100,000 in a briefcase was handed to Mayor Errichetti in the presence of New Jersey Casino Control Commission Vice-Chairman Kenneth MacDonald, Errichetti met with Weinberg in Long Island and gave Weinberg a briefcase containing a portion of the bribe payment. The principal evidence, much of which was discussed during the Select Committee's recent public hearings, consists of the following:

- (a) Joseph DiLorenzo's statements to government agents and prosecutors that he drove Errichetti to such a meeting and that Errichetti gave a briefcase to Weinberg;
- (b) the audio tape created by Weinberg in which he recites a

preamble stating that, at the time he was placing the recorded call, it was 2:30 p.m. on April 1, 1979, and that he was calling Mayor Errichetti. Out of approximately 1,000 tapes, this is the only one of which we know with a preamble by Weinberg stating the time and date. Further, both the transcript of this tape and the tape itself lead the reader and listener to believe that the preamble and the conversation that follows it were separated by a period of mere seconds; but that was not, in fact, the case. Rather, the telephone toll records for Weinberg's telephone show that the conversation actually occurred several hours later, and an FBI

laboratory analysis of the tape shows that the recording machine was stopped after the pre-  
amble and was restarted before the conversation. Moreover, before the toll records had been produced and before the laboratory analysis had been conducted, Washington, D.C., prosecutors were told that the tape proved that Errichetti could not have met Weinberg in Long Island at the time claimed by DiLorenzo, because Errichetti could not have returned from Long Island to Camden in time to talk to Weinberg at 2:30 p.m.

- (c) A document in the FBI files shows that on October 20, 1979, Errichetti told an FBI informant that MacDonald would not and did

not take any money from  
Errichetti.

(4) There is substantial evidence that Weinberg solicited and received several gifts from middlemen during the operation without telling the FBI, and that his testimony denying receipt of those gifts was false. Specifically, there is evidence that Weinberg received three Piaget wristwatches, a briefcase, a wallet, a Betamax video recorder, and \$2,000 worth of liquor from George Katz; cash and an anti-radar device from Carpenter; cash from Rosenberg; cash from Eden; and a microwave oven, dishes, a video recorder, a Harmon-Kardon stereo received, a pair of Genesis III stereo speakers, and three Sony television sets from Errichetti. The documents show that Weinberg reported his having received the three watches from Katz, but the documents do not sug-

gest that he reported any of the other items. During the subsequent court proceedings, Weinberg admitted that he had received the briefcase, wallet and anti-radar device, admitted that he had received a bottle or two of liquor, stated that some of the cash transfers had occurred but had been loans, and denied having received the other items. The evidence as to most of those other items consists of statements made by the donors in government interviews or in court proceedings. A thorough FBI investigation of the alleged Errichetti gifts provides substantial corroboration for the allegations, and items of the same brands and models as many of those alleged to have been given to Weinberg were found in Weinberg's home in Florida.

The documents strongly suggest that additional practicable measures could have

been taken to monitor and control Weinberg's activities. First, the documents unequivocally show that numerous telephone conversations and meetings in which Weinberg and middlemen were participants were neither recorded nor subsequently summarized in any document. Some of these were unquestionably material, such as the meetings between Weinberg and Errichetti on January 19, 1979, immediately before the Errichetti bribe; on January 20, 1979, immediately after the Errichetti bribe; and on March 30, 1979, immediately before the MacDonald bribe; and numerous conversations between Weinberg and Stowe both in April and in November 1979. The files contain no explanation for the failure to record or to summarize these conversations. Nor do the files contain any instruction or criticism from FBI Headquarters regarding the field agents' failure to compel



Weinberg to tape the entire contents of such conversations.

Second, the files show that, throughout the period of the Abscam operation, the FBI's internal policies required agents to prepare written summaries, called FD 302s, of all conversations in which the informant participated and which might be the subject of subsequent testimony. The files also show that prosecutors from the New Jersey United States Attorney's office and from the Department of Justice Strike Force in New Jersey complained on several occasions, beginning as early as April 1979, about the failures to record or memorialize material conversations. These complaints were made to the FBI agents in New York, to attorneys in the Strike Force for the Eastern District of New York, and to Department of Justice officials in Washington, D.C. No written response to those

complaints appears in the files. No written instruction or criticism from FBI Headquarters or from the Department of Justice was sent to the New York agents or attorneys. (It should also be noted that Agents McCarthy and Askeland prepared numerous FD 302s during their undercover assignments in Abscam; it was only when their active participation in Abscam ceased that the preparation of FD 302s came to a virtual halt.) It appears that, if FBI agents had conscientiously debriefed Weinberg and memorialized the debriefing after every unrecorded conversation he had with a middleman, Weinberg's activities would have been more closely monitored in the field and could have been more readily reviewed by officials in Washington, D.C.

Third, the documents show that Weinberg moved to Florida in the middle of the

Abscam operation, just before the asylum scenario was implemented. That put him and the principal undercover agent, Anthony Amoroso, roughly 1,500 miles away from the FBI supervisor in charge of the operation and from the strike force attorneys responsible for providing legal advice. Moreover, this occurred at a time when the only political corruption being investigated was located in New Jersey and when Abscam was not focusing on any other kind of criminal activity.

Fourth, the documents show that Weinberg was being used as an informant simultaneously in at least two different undercover operations, Abscam in New York and Goldcon in Florida. The documents also reflect very little communication between the agents in charge of the two operations, so that Weinberg's activities in one jurisdiction were neither promptly nor fully

described to FBI agents in the other jurisdiction.

Fifth, Weinberg was not asked to consent to the use of monitoring equipment or a pen register on his home telephone. He was not required to submit a copy of his telephone charge records or of his telephone bills when he received them. Thus, FBI agents and officials used virtually none of the available techniques to closely monitor Weinberg's telephone calls, except to ask him to record conversations he considered material.

Sixth, as already noted above, the FBI neither promptly transcribed all tapes given to them by Weinberg nor required him to provide the tapes on a daily basis. The agents and supervisory personnel thereby failed to take the steps needed to have prompt, accurate knowledge of what Weinberg was saying to the various middlemen.

Finally, the FBI apparently did not number or otherwise identify recording tapes before giving them to Weinberg and did not keep any log of which tapes were returned by him on what dates. This omission prevented the FBI from knowing how many tapes Weinberg lost or destroyed.

105a

Statement  
of  
Robert J. Del Tufo  
Before the  
Subcommittee on Civil and  
Constitutional Rights,  
Committee on the Judiciary,  
United States House of Representatives  
September 16, 1982

APPENDIX

## ABSCAM - CHRONOLOGY

2/28/79 - 9/15/80COVERT PHASE

New Jersey became involved in ABSCAM during the Spring of 1979 at the invitation of the Department of Justice.

On February 28, 1979, following a telephone call to me, I met with Thomas Puccio, Chief of the Brooklyn Organized Crime Strike Force, at the United States Attorney's Office in Newark, New Jersey. Also present at the meeting were Robert C. Stewart, Special Justice Department Attorney in Charge of the Newark Organized Crime Strike Force, William W. Robertson, First Assistant United States Attorney, and Thomas Emery, Special Agent in Charge of the New Jersey FBI. Mr. Puccio advised that Mayor Errichetti had claimed to undercover operatives that he

was in a position to influence corruptly members of the Casino Control Commission and particularly Commissioner Kenneth MacDonald. Mr. Puccio described briefly events to date and indicated that Mayor Errichetti had already received a \$25,000 payment. He stated that further meetings to assess Mayor Errichetti's assertions were being planned. I thanked Mr. Puccio for the information and asked him to keep me advised of developments.

Thereafter, I spoke with Mr. Puccio several times by telephone. He told of further events including a possible meeting to be held in Long Island with Mayor Errichetti, Commissioner MacDonald and FBI Special Agent McCarthy (posing as Abdul employee McCloud) in attendance. Mr. Puccio also advised that the name of Senator Harrison Williams had arisen and sought information about him. He indi-



cated that a Florida meeting of the operatives with Senator Williams and Mayor Errichetti was possible. The meeting in fact occurred on the "Sheik's yacht" on March 24.

On March 26, during a Strike Force Chief's meeting in Washington, Mr. Puccio met with Mr. Stewart and Philip B. Heymann, Assistant Attorney General in charge of the Criminal Division. At the March 26 meeting other ABSCAM matters were discussed. Messrs. Heymann and Puccio believed it desirable to have Newark participate in ABSCAM to obtain the benefit of its thinking and of information about New Jersey figures. It was agreed that a meeting would take place in Brooklyn as soon as possible.

On April 4, Mr. Stewart and I visited the offices of the Brooklyn Strike Force and met with Mr. Puccio. We discussed the

March 31 meeting in Long Island when "McCloud" passed an attache case containing \$100,000 in cash to Errichetti while Commissioner MacDonald was present in the room. Mr. Puccio advised us that, at a taped luncheon meeting afterwards, MacDonald had made incriminating, corrupt statements and had sought future employment for his son-in-law and himself with Abdul's casino.\* We discussed the matter involving Senator Williams. We also examined a New Jersey Legislative Manual which Errichetti had given to Weinberg and in which he had placed a check mark next to the picture of those legislators

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\* As will also be mentioned later in this chronology, the tape proved to be inaudible and not capable of enhancement. It was not until March or April of 1980 that Special Agent Amoroso stated that MacDonald had not made corrupt or incriminating statements at the luncheon.

whom he claimed would enter into corrupt arrangements. Mr. Stewart and I supplied information about certain of the legislators identified by Errichetti. We discussed the future conduct of the investigation and agreed that it would be pursued in a systematic way with the active participation of attorneys from both Brooklyn and New Jersey working in a joint, cooperative fashion.

Edward J. Plaza, Executive Assistant United States Attorney and Robert A. Weir, Jr., an Assistant United States Attorney serving as Assistant Attorney in Charge of the Newark Strike Force, were assigned as New Jersey's representatives. They visited Brooklyn to familiarize themselves with the file and to commence working with Brooklyn Strike Force attorneys Jacobs and Sharf. Soon thereafter, Messrs. Plaza and Weir identified certain problem

areas which they called to the attention of Mr. Stewart and myself as well as to the attention of the Brooklyn Strike Force. In essence, the Newark prosecutors noted the absence of meaningful controls of Weinberg and of the normal machinery to insure such control. Among the matters identified were the following:

1. FBI 302 summaries or other reports of various events, including unrecorded conversations, were lacking. In addition, a significant number of taped conversations had not been transcribed or otherwise memorialized. Such documentation is essential to systematic, meaningful review of the progress of an investigation both by people in the field and by their supervisors.

2. No written chronology of per-

tinents events was being maintained. Such a running account is important to case management and aids in the preparation of a supporting affidavit should a Title III electronic surveillance application prove necessary.\*

3. A complete log of telephone communications were not being maintained. A number of conversations were unrecorded and certain tapes were either interrupted or did not start at the beginning of a conversation.

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\* Though, sometimes in May, Mr. Puccio assured Mr. Stewart and me that he had directed Mr. Sharf to prepare and maintain a chronology, none was, to my knowledge, ever written. Over the months, various Title III projects were suggested by us, particularly with references to Errichetti. Review of his conversations with third parties could, we pointed out, provide investigative leads and throw light upon on-going criminal conspiracies attended to by Errichetti during the undercover activity.

Those and other circumstances suggested that Weinberg was being selective, thereby raising the possibility of duplicity on his part and calling for tighter controls over him and his activities.

4. Legal research on various Travel Act, Hobbs Act and other federal criminal law questions was required in order to properly orient the undercover operatives in their dealings.

Messrs. Plaza and Weir suggested that the deficiencies be remedied. Their identification of the problems prompted Mr. Stewart and I to meet with Mr. Puccio in Brooklyn on May 11. We urged the same reforms -- i.e., prompt preparation and dissemination of transcripts, of 302s and of other reports of events, maintenance of a written running chronology, maintenance of a telephone log, full and complete

recordation of all conversations, closer oversight and control of Weinberg and his activities, and the conduct of legal research. Mr. Puccio expressed reservations, particularly over the control issue concerning which he eschewed "over-management" and indicated a preference to leave the operatives to their own devices without close prosecutorial oversight. Ultimately, however, he indicated concurrence with the suggestions and renewed the pledge to have our respective attorneys work with the FBI case agent John Goode and the operatives to develop a plan by which all leads might be pursued.\*

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\* I met again with Mr. Puccio later in the month, in the company of Mr. Robertson, to urge again proper management and office cooperation and again he pledged his support.

The remedial management controls necessary to proper evaluation of the investigation and to proper supervision of Weinberg were, however, not established although the situation was called repeatedly to Mr. Puccio's attention. Moreover, Messrs. Plaza and Weir were soon denied by Mr. Puccio any meaningful access to information. When Mr. Plaza and Mr. Weir described to me their fruitless trips to Brooklyn, I would contact Mr. Puccio. Typically, he would either deny the existence of a problem or assure me that any difficulties would be promptly remedied. In view of his comments, I would typically send Messrs. Plaza and Weir back to Brooklyn with instructions to continue to work to develop a cooperative arrangement.

Nothing fruitful occurred during



May and June. On July 9, Messrs. Plaza and Weir, while again visiting the Brooklyn Strike Force offices, were told by Mr. Puccio: that meetings between prosecutors from Brooklyn and New Jersey were not productive; that New Jersey should not be concerned about analysis of legal issues since he was personally monitoring the investigative progress on a daily basis with case Agent Goode; that the presence of New Jersey attorneys disrupted his method of investigation; and that the investigation should be terminated soon because its continuation enabled Commissioner MacDonald to remain in a position of public responsibility. When Messrs. Plaza and Weir returned to the office and advised me of this conversation, I contacted Mr. Puccio and met with him in Manhattan on July 11, 1979. Though it was clear that he had

made those statements to my attorneys, Mr. Puccio insisted that he had not and renewed his pledge to pursue a cooperative investigation. In view of what had transpired over the past months, I took certain additional steps to try to insure that the investigation would continue and that a cooperative venture would become a reality. I wrote to Mr. Puccio on July 13, 1979 expressing my concern that the investigation might languish or even be concluded prematurely without realizing its maximum potential. I asked for a meeting with him and with the Special Agents in Charge of the Newark and New York FBI offices on Monday or Tuesday, July 16 or 17, in order to establish an understanding as to the future course of action to be pursued. I also advised him that I wished to review the situation with

Mr. Heymann and other officials in Washington on Wednesday, July 18.\*

My letter of July 13 went on to summarize certain past events. I indicated that at our meetings over the last three months I had stressed the importance to the citizens of New Jersey and to the Federal Government of pursuing the investigative opportunity in a systematic and comprehensive way. I advised him that I thought it imperative to participate with the FBI in the development of a plan by which, to the maximum extent possible, public officials identified as corrupt would be given an oppor-

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\* I had also contacted then Deputy Attorney General Benjamin Civiletti and had acquainted him with the problem. He had suggested a discussion with Mr. Heymann to work out the details of a cooperative arrangement if one could not be voluntarily agreed upon by the parties. Mr. Civiletti indicated that forging such arrangements was not common.

tunity to demonstrate their violation of the public trust. I pointed to a number of specific suggestions and proposals for gathering evidence which had been assembled by my staff and pointed to the fact that, notwithstanding such action, little progress had been made to devise and agree upon a comprehensive plan to pursue the investigation. I went on to say that any suggestion of premature termination of the probe was unacceptable.

Mr. Puccio contacted me by telephone on July 16, 1979 in response to my letter. I generally outlined once again the parameters of what we had previously agreed would constitute our cooperative venture. I confirmed the outline by letter of July 17, 1979. The letter, which was delivered to Mr. Puccio, suggested that: attorneys from both offices jointly participate in and

supervise the investigation; that an investigative plan be developed by the attorneys with FBI representatives including Mr. Goode; and that every effort should be made to maximize the investigative potential and to insure that it neither languished nor prematurely terminated. When Mr. Puccio declined to acknowledge the plan, Mr. Stewart and I visited Washington on July 18 for a meeting attended by Mr. Heymann, Irvin Nathan, Deputy Assistant Attorney General who had been placed in charge of ABSCAM by Mr. Heymann, David Margolis, Chief of the Organized Crime Section, Mr. Gerald McDowell, Deputy Chief of the Organized Crime Section, Mr. Puccio and Mr. Edward Korman, United States Attorney for the Eastern District of New York.

At the July 18, 1979 meeting I urged: that the investigation not be prematurely terminated and that all leads be vigorously and systematically pursued; and that the investigation be undertaken in a truly cooperative manner with attorneys from both the Brooklyn Strike Force and Newark working together. I emphasized my view that the cooperative approach was the proper one because of the Brooklyn Strike Force's participation in ABSCAM from its inception, because of the good working relationships which it had developed with the case agent and FBI personnel, and because of the obvious need to have New Jersey participate in the investigation of New Jersey public officials and organized crime elements. Mr. Puccio opposed the cooperative plan, indicating his objection to what he termed "management by committee",

and insisted upon exclusive authority over future investigative steps. He also said that Newark over the years had tended to "over-manage" cases by attempting to control tightly field operations and that he disagreed with this approach. Mr. Stewart and I raised concerns over lax control of Weinberg and the lack of requisite machinery for exercising such control. A discussion of the then two pending matters -- Commissioner MacDonald and Senator Williams - touched upon the need for further meetings with MacDonald to eliminate doubts concerning his criminal intent,\* the question of the possible

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\* Among the factors discussed were the absence of indications of corrupt intent in pre-March 31 conversations, the possibility that Errichetti pressured MacDonald to attend on March 31, and the fact that a meeting could be arranged with MacDonald directly in view

closing down of the investigation after both matters were firmed up, and possible venue for trial of any indictments.\*

Mr. Nathan inquired as to what further investigative steps Mr. Stewart and I considered appropriate. We suggested various public official and organized crime subjects both within and without Atlantic City previously developed by virtue of known profiles, other probes and ABSCAM contacts with Errichetti.

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(Footnote \* continued from previous page)

of the reported luncheon conversation following the March 31 meeting with McCloud in which MacDonald allegedly sought employment for himself and his son-in-law with Abdul's casino. No such further meeting was ever held. At some point later in the investigation, I recall field expressions of fear that a conversation would produce exculpatory information.

\* Venue decisions were properly postponed until conclusion of the investigation.



We emphasized the pressing public need to inquire into allegations concerning the Casino Control Commission and the activities of the casino industry.

I also cited the importance of either proving or disproving the Errichetti allegations concerning New Jersey legislators so that the corrupt might be prosecuted and those who might be the innocent victims of Errichetti puffing could be cleared. Messrs. Heymann and Nathan commented upon the potential investigative subjects noting the national consequences of casino related matters. Mr. Nathan questioned why the Brooklyn Strike Force should be involved at all in any further investigative efforts involving New Jersey subjects, asking me why my office simply should not assume sole responsibility for future ABSCAM efforts with New Jersey, parti-

cularly the casinos, as the target area. I again pressed for a cooperative arrangement, reemphasizing the reasons previously stated, particularly the advantage to using Brooklyn's relationships with the undercover team and the case agent to enhance investigative progress.

On July 19 or 20, Messrs. Heymann and Nathan advised all prosecutors concerned: that the ABSCAM investigation would continue with the New Jersey political and organized crime subjects in the casino industry and elsewhere, which were described at the July 18 meeting, as the primary targets; that jurisdiction over ABSCAM would be transferred to New Jersey under the aegis of Mr. Stewart and myself; that Brooklyn would continue to have primary prosecutive oversight of the on-going MacDonald and Williams matters; and that investi-

gative steps in those matters would be undertaken by Mr. Puccio only in consultation with Mr. Stewart and myself.

Mr. Stewart and I visited Mr. Puccio in Brooklyn on July 26, 1979. Mr. Puccio acknowledged the Heymann decision. He indicated that a copy of the file would be sent to us promptly, that a good faith effort would be made to effect a smooth transition with the undercover people so that New Jersey leads might be properly pursued, and that no action would be initiated with respect to the MacDonald and Williams cases without prior consultation with us. We, in turn, advised Mr. Puccio that we would consult with him concerning future developments in New Jersey and have him as an integral part of the investigatory process.

Notwithstanding Mr. Puccio's commitments and the orders of Messrs. Heymann

and Nathan expressed both in July and on several subsequent occasions which will be mentioned, the undercover operatives never pursued New Jersey organized crime and corruption leads in any comprehensive way or with any diligence, and remained under the prosecutorial umbrella of Brooklyn.

From this point on, New Jersey's involvement in the covert phase followed two courses.

The first, because the operatives did not come to New Jersey, was to ask the Department of Justice to enforce its directive that ABSCAM focus upon previously and properly targeted New Jersey organized crime and public corruption subjects.

The second -- as information became available to us -- was to communicate to the Department our continued concerns

about the conduct of Weinberg, the absence of adequate factual predicates in focusing the investigation in other directions at particular persons, and the lack of objective supervisory oversight of the field. We urged that Weinberg and ABSCAM be brought under control and warned that Weinberg's overreaching might be constitutionally impermissible and could jeopardize potential prosecutions. The potential for mischief, noted from the outset, became more apparent as further information became available following the July Heymann-Nathan directive when we began to receive from the FBI more specific information about the investigation and when, in August, we received a copy of the file and began to review the history of past investigative action.

The concerns, as well as the apparent refusal of the field to pursue the Departmental priorities, were called to the Department's attention in various telephone and personal conversations which I had with Mr. Heymann, Mr. Nathan and Acting Deputy Attorney General Ruff and in comprehensive memoranda dated September 12, 1979, October 31, 1979, November 7, 1979, December 3, 1979, January 8, 1980 and January 29, 1980 forwarded by Mr. Stewart to either Mr. Margolis or Mr. McDowell.\* Before transmittal, the contents of these memoranda were reviewed by me and represented the position of the New Jersey United States Attorney's Office. The concern over

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\* Mr. Stewart also had telephone and personal conversations with these gentlemen.

Weinberg was also expressed in memoranda requested by the Department concerning specific cases.\* Submission of such memoranda was suggested to me by Mr. Nathan in various conversations between us as early as August and requested in writing by memorandum of October 5, 1979. Accordingly, in late August or early September I assigned Assistant United States Attorneys Braniff and Alito to assist Messrs. Plaza and Weir in reviewing copies of the recently received tapes, transcripts and other information concerning ABSCAM, in continuing legal research and in writing such memoranda.

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\* In response to the request, and after much factual and legal research, memoranda were submitted in December of 1979 and January of 1980 in connection with the Williams, MacDonald and Thompson cases.

Returning to the chronology, sometime in July or early August of 1979 we reviewed the taped conversations between Weinberg and Senator Williams which took place immediately prior to the latter's meeting with the "Sheik" in Virginia on June 28 and during which Weinberg coached the Senator as to what he must say to the Sheik. Needless to say, such conduct triggered concern not only in terms of prosecutorial responsibility but also from the standpoint of avoiding jeopardy to a potential future prosecution. These concerns were communicated to the Department and to the operatives over the ensuing weeks. August 9 bears particular mention in this context.

After several attempts, we were able to schedule a meeting with the operatives in an effort to discuss possible future investigative steps.



On August 9, 1979, Messrs. Plaza and Weir met with Messrs. Weinberg, Amoroso and Good in Atlantic City. New Jersey FBI Special Agents Schneider and Houlihan were also present. During the meeting, Mr. Plaza referred to Weinberg's coaching of Senator Williams and cautioned him not to repeat such activity. Weinberg responded that unless he told people what to say there would be no cases. The undercover operatives indicated disappointment that the coaching episode had been recorded and stated an intention not to record such conversations in the future. Mr. Plaza advised that all conversations and events were to be recorded or memorialized by 302 or other report.

The ABSCAM operation continued but outside the Department's declared priorities. As we learned much later, the field devised the "Sheik Asylum"

scenario in July or August and put it into effect. Over the ensuing months, contact was made with numerous subjects, some of whom were selected rather indiscriminately. On or about August 28 or 29, we learned that contact had been made with Philadelphia Congressman Myers. With Mr. Nathan's permission, on September 6 I met with Peter Vaira, the United States Attorney for the Eastern District of Pennsylvania, and informed him of ABSCAM and of developments involving his District.

The "Sheik Scam" and the Myers involvement were the first indications of a radical change in the nature of ABSCAM, one engineered by the field. The operatives had not focused upon New Jersey organized crime and corruptions targets, as the Heymann-Nathan July 1979 directive required them to do. A further

meeting of affected prosecutors was scheduled in Washington for September 13, 1979. By Mr. Stewart's comprehensive memorandum of September 12 to Mr. Margolis, pertinent events from April to date were summarized and various legal problems were identified. The memorandum also emphasized again that the case management techniques necessary to the proper supervision and control of Weinberg had not as yet been put in place.

The September 13 meeting was attended by Mr. Nathan, Mr. Margolis, Mr. Stewart, Mr. McDowell, Mr. Vaira, Mr. Puccio and myself. We raised the Williams coaching incident and the Washington officials agreed that such practices must cease.\*

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\* Mr. Heymann expressed much concern over the coaching when I met with him the same or the following day. He questioned how the government could prosecute someone for following a government script.

The investigative priorities were re-stated by Mr. Nathan. The previously identified organized crime and corruption leads in New Jersey (together now with Philadelphia) was again listed as the first investigative priority.\* Specific guidelines were outlined to govern any communication or operational problems. I requested that the substance and directives of the meeting be confirmed in writing in view of the failure of like oral commands which followed the July meeting. Mr. Nathan agreed. And the understandings confirmed on September 13 were memorialized in an October 5

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\* On September 24, at Mr. Margolis' request, Mr. Stewart forwarded a 14 page memorandum identifying again the organized crime and political corruption subjects against which ABSCAM might, at least initially, be directed.

memorandum from Mr. Nathan to Mr. Margolis, Mr. McDowell, Mr. Vaira, Mr. Puccio, Mr. Stewart and myself.\*

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\* As there indicated, the first investigative priority was to pursue leads against subjects within the District of New Jersey and the Eastern District of Pennsylvania. The subjects were to be identified by Mr. Stewart and myself with the advice of Mr. Vaira. Investigative activity was to be coordinated by New Jersey. Mr. Puccio was continued as the prosecutor with day-to-day operational oversight in areas not affecting New Jersey and Pennsylvania. The memorandum went on to advise that whenever it appeared that the investigation might be directed toward subjects other than those identified as first priority by Mr. Stewart and myself, Mr. Puccio would advise us of the suggested diversion. If we believed the proposed activity would adversely affect the first priority, we had the option of objective to the suggested change of direction and the disagreement would be resolved in Washington by Mr. Margolis. With respect to the MacDonald and Williams cases which were described as being substantially completed, the confirmatory memorandum stated that primary prosecutive responsibility on a day-to-day basis was to remain with the Brooklyn Strike Force. All steps necessary to complete the investigation were to be determined after consultation between Messrs. Puccio,

The confirmatory directive of September 13, as memorialized by the memorandum of October 5, was never followed. Though Newark prosecutors were able to meet with case Agent Goode

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(Footnote \* continued from previous page)

Stewart and myself. In addition, Mr. Puccio was enjoined to submit legal memoranda summarizing the evidence to date in the two cases and discussing any evidentiary or legal problems which might exist concerning the elements of the offenses and possible defenses. Mr. Stewart and I were solicited to file memoranda setting forth any additional facts or legal analysis which we believed should be considered prior to seeking indictments. The confirmatory memorandum also discussed the location of future meetings and overt acts in the investigation, indicating that no effort should be made to influence artificially the location in which acts would take place and that, to the extent possible, acts should occur in the jurisdiction in which the subjects were elected or appointed. The memorandum concluded by indicating that the investigation would not be continued for an undue period of time and would be concluded after all factors had been taken into account, including the right of the electorate to know of charges against their public officials.

on at least three occasions during October, nothing of consequence to pursuit of New Jersey subjects occurred, during the meetings. Excuses were forwarded as to why the operatives would be unable, for one reason or another, to make progress. During this time frame, of course, the "Asylum" scam was being pursued elsewhere. The meeting with Agent Goode on October 4, however, which occurred at the Newark FBI office, is instructive in another respect. During the meeting, Goode criticized Plaza for having admonished Weinberg during their August 9 conversation to avoid coaching, claiming that Weinberg had been offended and that the admonishment had thereby "jeopardized" the investigation.

Mr. Stewart's October 31 memorandum to Mr. McDowell, reported in detail about events over the past month and a half and

problems which had developed. Reference was made to Agent Goode's October 4 statement to Plaza, noting that possible coaching incidents raised possible deficiencies in criminal intent and urged that immediate corrective measures be taken. The memorandum observed that the informant seemed to be directing the course of the investigation and that management must be tightened. The memorandum also described the investigation as being at a critical juncture and called for Washington to enforce its mandates not only as to proper management but also as to its designated investigative priorities in New Jersey and Philadelphia. The memorandum also discussed the MacDonald case, indicating that the absence of an intent to receive money was a distinct possibility and reiterated again the request that efforts



be made to enhance the tape of the supposedly incriminatory March 31 luncheon meeting.\*

On or about November 9, Messrs. Plaza and Wein met with Messrs. Puccio and Goode in Brooklyn. During the course of their meeting, Goode stated that he wished to run the investigation without prosecutorial interference or oversight, noting that this was the way Mr. Puccio handled things. Both Plaza and Weir urged the importance of prosecutorial oversight to avoid legal problems in the future. Mr. Stewart advised Mr. McDowell of this conversation.

These and other events prompted a further meeting in Washington on

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\* The request had been forwarded several times including in an October 19 memorandum from Mr. Stewart to Mr. McDowell.

November 14, 1979. Among the attendees were Messrs. Heymann, Nathan, Vaira, Margolis, McDowell, Puccio, Stewart and myself. A variety of subjects were discussed including possible dates for termination of ABSCAM, possible press awareness of the probe, management needs and priorities.\* The field's diversion into the "Asylum" scam had identified a number of subjects for possible criminal prosecution. Mr. Nathan

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\* Mr. Nathan suggested the investigation be terminated by the time of the primaries. Both Mr. Vaira and I pointed out the hazards of premature termination and urged the investigation continue until all leads were properly pursued. Mr. Puccio expressed concern that the press might already have the story, claimed that Errichetti had somehow become suspicious. Mr. Heymann stated that he believed the Wall Street Journal knew of the investigation but would withhold publication of a story at the present time.

accordingly listed perfection of these cases as the first order of business but also directed again that New Jersey leads be pursued. As previously indicated, this command was neither honored nor enforced.

On December 18, 1979, in response to the Department's oral requests in August and September of 1979 and to the October 5, 1979 written solicitation in Mr. Nathan's memorandum for comment upon cases, I sent to Mr. Heymann a memorandum to me from Messrs. Plaza, Braniff and Alito containing a factual and legal analysis of matters involving Senator Williams. The memorandum had been reviewed and edited by me and represented the office view of the matter based upon the file as it existed at that time. The memorandum concluded that, based upon the available information, Weinberg had engaged in overreaching and that the

Senator's rights had been violated.

Copies of the memorandum were sent to Messrs. Ruff, Nathan, Margolis, McDowell, Puccio and Mullen. Subsequently, on January 8, 1980, memoranda were also sent dealing with the MacDonald case, the Thompson case, and the legal issues of entrapment and due process.

On January 7, 1980, I had a telephone conversation with Mr. Nathan. Among other things, the discussion touched upon the reasonable predicate for believing that criminal conduct will occur before an investigation is directed toward a given subject. Mr. Nathan questioned our previously, and repeated, expressed insistence that such a predicate must initially exist. Mr. Nathan stated his view that overreaching by the informant need not be evaluated in advance. He indicated that proper operating procedure

would permit having public officials attend a meeting and be videotaped without prior predicate and that judgments would subsequently be made as to whether or not to prosecute based upon whether a crime was in fact committed and whether there had in fact been entrapment. He also stated that he had little regard for the viability of the due process defense and found nothing improper in Weinberg's coaching of Senator Williams.

On January 8, 1980, another comprehensive Stewart memorandum was forwarded to Mr. McDowell. It again stated the problems being encountered in fulfilling the investigative responsibility which the Department had imposed upon New Jersey. It cited further substantive problems engendered by Weinberg's insistence upon devising and pressing the criminal scheme.

On January 18, 1980, Mr. Nathan

circulated a memorandum to all prosecutors directing that a centralized grand jury in Brooklyn would be utilized to gather evidence in all of the cases, indicating the covert phase of the investigation would soon conclude and scheduling a meeting in Washington to discuss the matter further. The memorandum also assigned case responsibilities to each of the involved offices.

The further meeting called for by Mr. Nathan took place on January 22, 1980. Mr. Nathan announced that the covert phase of the investigation would conclude on February 1st.

By Stewart memorandum of January 29, 1980 to Mr. McDowell, further concerns over Weinberg's overreaching were stated.

The covert phase of ABSCAM concluded on February 2, 1980.

OVERT PHASE

New Jersey was assigned the MacDonald and Maressa cases. In addition, we were to pursue with the New Jersey FBI various investigative leads involving casinos. Messrs. Plaza and Weir were assigned to the task and worked very closely over many months with the FBI. As directed, the centralized grand jury in Brooklyn was utilized to gather evidence. The general inquiry into casino related matters did not produce evidence to support allegations of criminality. The investigation continued in depth in connection with the MacDonald and Maressa matters. In the MacDonald case, Mr. Weir learned in March or April that past reports of the March 31, 1979 luncheon had been inaccurate. For almost a year, prosecutors were under the impression, based upon representations from the field as to what had occurred,

that MacDonald had made corrupt and incriminating statements at the luncheon meeting. Yet, a year later, Agent Amoroso indicated no such statements had been made. Newark prosecutors continued to note a number of unrecorded or inaudible conversations between Weinberg and Errichetti which usually occurred before important events in the case. Indeed, one unrecorded meeting of long duration took place on the evening before the Errichetti-MacDonald March 31, 1979 trip to Long Island.\* Obviously, it was important to know what had transpired during this conversation in evaluating the potential case against MacDonald.

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\* Messrs. Plaza and Weir "discovered" this fact only because a recorded conversation referred to the prior unrecorded meeting. The meeting was otherwise not noted in government files.



On April 17, Mr. Weir wrote to Mr. Puccio and inquired as to any recollection he might have on this score.\* And we continued to request of the Department an opportunity to debrief Weinberg and Amoroso on the subject.

On April 25, 1980, Messrs. Plaza and Weir submitted a 23 page investigative status report to me summarizing the vast amount of work they had undertaken in pursuit of the responsibilities assigned to New Jersey and advising as to the current status of each matter. I revised the report and forwarded copies to Mr. Heymann and Mr. Nathan.

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\* He also sought, without success, to interview FBI Special Agent Fuller who had information about Weinberg's dealings in fictitious certificates of deposit.

It was approximately at this point in time that Mr. Nathan began to press me to commence our own ABSCAM grand jury and to indict Mr. MacDonald on the basis of what he termed the prima facie videotape evidence. I refused. Citing reasons of principle and practicality gathered during my years in law enforcement, I told Mr. Nathan of the importance of assembling and evaluating as much relevant information as possible before suggesting that an indictment be handed up and indicated that before any action was taken we assuredly wished to question Messrs. Amoroso and Weinberg about what in fact had occurred during the various unrecorded or inaudible conversations. I refused to commence a New Jersey grand jury proceeding until such debriefing had occurred. I did so out of a sense of caution. I decided not to start the potential indictment

process moving until the operatives had been produced and the promised interviews had been conducted. \*

Messrs. Plaza and Weir continued to work diligently upon both of the cases assigned to New Jersey. They were also in contact with Assistant United States Attorneys from Philadelphia and Washington to be whatever assistance they could in the pursuit of cases in the Eastern District of Pennsylvania and the District of Columbia. They continued to use the centralized grand jury in Brooklyn to gather evidence. They continued to

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\* During the week of May 12, Messrs. Plaza and Weir attended a conference of all involved prosecutors for a supposed thorough debriefing of Messrs. Amoroso and Weinberg. They were unable to gather the information we required. Amoroso and Weinberg arrived some hours late and were not prepared for a total debriefing session.

press the Department, and me, for a master list of tapes, for copies of tapes and transcripts, for interviews of the operatives and for all other relevant information.

On May 29, 1980, Mr. Weir and I attended a meeting of prosecutors in Washington to discuss the Jenrette case. Present were prosecutors from the District of Columbia and representatives of the Department including Messrs. Heymann and Nathan. Some due process concerns were raised during the course of the meeting, including Weinberg's taped attempt to target two United States Senators. The District of Columbia Office requested further time to inquire into various evidentiary concerns but were directed to return an indictment within a set period of time. It was at this meeting that Mr. Nathan indicated that Weinberg

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was to be paid in accordance with the number and status of officials that he was able to bring before the cameras. Convictions were not a prerequisite to payment.

On June 4, 1980, Messrs. Weir and Plaza at my request prepared another status report of their considerable investigative efforts and I forwarded a copy to the Department in Washington.

On June 6, 1980, Messrs. Weir and Plaza and FBI Special Agent Houlihan interviewed Joseph DiLorenzo, Mayor Errichetti's nephew. Mr. DiLorenzo offered information that Weinberg allegedly shared the \$25,000 and \$100,000 payments to Errichetti in the MacDonald matter and that Errichetti made a significant number of gifts to Weinberg.

On June 12, 1980, Mr. Weir attended a prosecutors' meeting involving the

Thompson case. Both Mr. Weir and District of Columbia Assistant United States Attorney Roger Edelman discussed information which had recently become available and which suggested additional misconduct on Weinberg's part. Specifically, the allegations were that Weinberg had received a gift of a microwave oven and that Weinberg, himself, may have been the source of the false certificates of deposit which he had purportedly "recovered" and for which he was given a cash prize by the Department of Justice. Information about the certificates of deposit had come from Mr. Rosenberg who also commented upon the availability of other witnesses to the scam. Mr. Puccio indicated that he was aware of the microwave oven allegation and said that he would see that the oven was removed from Weinberg's house. He stated that he saw no problem

with the certificates of deposit since there were no plans to charge Rosenberg with a crime involving those certificates. He also said that both he and case agent Goode would "coach" Weinberg on these points. After discussion, Mr. Nathan indicated there would be "no coaching" but authorized Messrs. Puccio and Goode to deal with Weinberg and denied Mr. Edelman's request for authority to undertake an immediate debriefing of Weinberg. There has, to my knowledge, not as yet been an objective inquiry into the allegations that Weinberg was the source of the certificates of deposit in the matters involving Rosenberg.\*

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\* There is also evidence that Weinberg was the source of false certificates of deposit given to Errichetti.

Thereafter, Mr. Weir asked Mr. Houlihan to inquire into the allegations concerning the certificates of deposit and concerning possible gifts and to seek information from the FBI on these points. On or about June 16, Agent Houlihan teletyped the request to FBI headquarters in Washington.

On June 17, Messrs. Plaza and Weir traveled to the District of Columbia to participate with District of Columbia Assistant United States Attorneys Edelman and Kotelly in scheduled interviews of Mr. Rosenberg and of Mr. Weinberg. I assigned Messrs. Plaza and Weir this task at the specific request of United States Attorney Ruff who indicated that his Assistants enjoyed the opportunity to work with Messrs. Plaza and Weir and that they could be of assistance to his office were they to attend the interviews.



In addition, Mr. Rosenberg was a common figure to cases assigned to the District of Columbia and to New Jersey. Mr. Rosenberg was interviewed on June 17. The Weinberg interview was scheduled for June 18. Messrs. Edelman and Kotelly decided that, in accordance with usual procedure, they would interview Weinberg outside the presence of other potential witnesses and thus outside the presence of Messrs. Goode and Amoroso. Messrs. Goode, Amoroso and Weinberg arrived at the District of Columbia United States Attorney's Office on June 18 and were escorted into a conference room in which Messrs. Edelman, Kotelly, Plaza and Weir were sitting. Messrs. Kotelly and Edelman advised Goode of their intentions in questioning Weinberg. Messrs. Goode and Amoroso refused to have Weinberg interviewed in that fashion and insisted upon

being present. They directed pejorative remarks at Messrs. Plaza and Weir, suggesting essentially that the idea of a solitary interview of Weinberg was that of Plaza and Weir and that Messrs. Plaza and Weir were their enemies. They indicated that they did not wish to speak to Messrs. Plaza and Weir again.

On June 19, I spoke with both Mr. Ruff and Mr. Heymann about what had occurred on the prior day and about the outrageous conduct of the Messrs. Goode and Amoroso.\* I also discussed with Mr. Heymann the reason why I did not want to convene a grand jury and why I wished

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\* There was, of course, a possible calculated connection between the event and the fact that Messrs. Weir and Plaza continued to ask proper and pertinent questions and to seek all relevant information, including facts concerning Weinberg's conduct.

to assemble all pertinent factual information before proceeding in that fashion. Mr. Heymann approved of this approach and suggested I contact Mr. Nathan to convene a prosecutor's group to review the evidence in the MacDonald and Maressa cases to date.

On June 20, I contacted Mr. Nathan by telephone. He had evidently not spoken with Mr. Heymann about our June 19 meeting and accordingly reacted to the suggestion of a prosecutorial group review with much hostility. He criticized my insistence upon assessing what had occurred during unrecorded conversations stating that I wished only to learn of exculpatory facts since unrecorded conversations would usually not be incriminatory. I again tried - without success - to explain to Mr. Nathan that becoming acquainted with what had occurred during

all conversations and meeting, including those which were unrecorded, was simply a matter of proper prosecutorial practice and responsibility.

Soon after the June 18 events in Washington, Messrs. Weir and Plaza asked to be relieved of their ABSCAM responsibilities because of their concern that critical evidence in the MacDonald case was being suppressed and that a proper evaluation of possible criminal conduct by Weinberg was not being undertaken by the Department.

Another meeting was scheduled in Washington and occurred on June 24, 1980. It was attended by Messrs. Heymann, Nathan, McDowell, Weir and myself. The following transpired: Mr. Nathan indicated that the undercover people did not wish to work with Plaza and Weir and that a debriefing would be unproductive. He stated that

New Jersey was only interested in negative (exculpatory) facts and allegations.

Mr. Nathan said that the MacDonald case should go to the grand jury, that an indictment should be handed up on the basis of the videotape evidence, and that any exculpatory material should be dealt with at trial. He indicated that Weinberg had been interviewed by Mr. Puccio and had denied receiving gifts. He confirmed that the Rosenberg allegations concerning the certificates of deposit had not been investigated. I stated once again that I considered it my responsibility to refrain from initiating a criminal prosecution unless I had reviewed all relevant facts capable of being ascertained in advance. I emphasized that, especially in a case such as MacDonald in which wrongful knowledge and criminal intent were such vital issues, I believed a prosecutor

had the responsibility to attempt to identify exculpatory material and that, as a practical matter, one would assuredly wish to be aware of any such information in advance of trial.

The suggestion was made that I withdraw Messrs. Plaza and Weir from ABSCAM, given the attitudes of the undercover people, I disapproved of this approach because it might falsely and improperly reflect upon Messrs. Plaza and Weir and because the situation was caused solely by the improper intransigence of the undercover operatives who deserved to be called to task. The meeting ended with the commitment that the operatives would be directed to submit to a debriefing by Messrs. Plaza and Weir and that Department attorneys who had already been working on certain ABSCAM cases would participate in order to try to smooth the waters.

After the meeting, I reflected upon the current situation. For months, the objective had been to gather and evaluate all relevant material in the MacDonald case before considering indictments. Debriefing of the undercover people was central to this effort. I realized that, notwithstanding the unwarranted and improper attitude of the undercover personnel, forcing them to a debriefing with Plaza and Weir might well exacerbate matters without producing much relevant information and that more factual data might be gained by having other attorneys undertake the task. I realized that calling for the assistance of some other attorneys at this point in time might be misconstrued. Nonetheless, I believed the paramount consideration was that relevant information be obtained without delay. I returned to Mr. Heymann's office and spoke

with him. We reassessed the problem and, in return for his commitment that a full debriefing of the undercover operatives would take place and that he would support a full and complete grand jury review, I indicated that I would write him a letter requesting the assignment of two Public Integrity Section attorneys to assist me in completing the cases. Accordingly, on June 30, 1980, I wrote to Mr. Heymann, citing the problem which beset us and requested the assignment of two additional attorneys to assist in completing the record which we would evaluate in order to make prosecutive judgments. I stated that while I knew the unwarranted situation which gave rise to our problem would be resolved given sufficient time, I believed the prompt and proper disposition of the case to be of paramount significance and that my request was the most likely to



achieve that result from a practical standpoint. In a July 28, 1980 letter to Mr. Keeney, the understanding was stated in somewhat further detail. The letter indicated that the Departmental attorneys were to undertake a full debriefing of the undercover operatives, were to report to me concerning their affairs and that final prosecutive evaluations and decisions would be made by Mr. Heymann and myself. Thereafter, in late August or early September of 1980, the two assigned attorneys, Messrs. Holder and Weingarten visited New Jersey, were housed in the United States Attorney's Office and commenced to function.

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STATEMENT OF WILLIAM W. ROBERTSON BEFORE  
THE SUBCOMMITTEE ON CIVIL AND  
CONSTITUTIONAL RIGHTS  
COMMITTEE ON THE JUDICIARY  
U.S. HOUSE OF REPRESENTATIVES  
  
CONCERNING "ABSCAM"  
SEPTEMBER 16, 1982

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to appear before you in connection with your hearings concerning the undercover operation known as ABSCAM.

It has been my impression that much of the testimony that you have taken thus far has, perhaps of necessity, involved overviews of the ABSCAM operation. Inasmuch as this is the first, and possibly the only opportunity that I will have to describe my involvement and the involvement of the United States Attorney's Office for the District of New Jersey, during a period commencing in approximately September, 1980, and continuing until March of 1981, I thought I would attempt to summarize, as well as I am able, the activities of my office and myself during that period of time.

By way of background, prior to my resignation on December 3, 1981, I had served with the United States Attorney's Office in the District of New Jersey since November of 1972. During that time I served not only as an Assistant United States Attorney assigned to general criminal matters, but, had as well served as the Deputy Chief of both the Criminal Division and the Special Prosecutions Division (white collar crime-political corruption) of that office. In 1976 I was appointed the Attorney in Charge of the Newark office of the Organized Crime Strike Force. I served in that capacity until I assumed my position as First Assistant United States Attorney in January 1978. By order of the United States District Court I was appointed United States Attorney for the District of New Jersey on September 15, 1980 and

served in that capacity until my resignation on December 3, 1981. Prior to joining the United States Attorney's Office, I served four and one-half years as a Captain in the Judge Advocate General's Corps of the United State Army and before that I served as judicial Law Secretary to the Late Honorable Merritt Lane, Jr., Judge of the New Jersey Superior Court. Half of my tour with the Judge Advocate General's Corps was devoted to responsibilities attendant to the investigation and prosecution of general courts-martial offenses.

I first became aware of the ABSCAM operation sometime in late February of 1979 along with the then United States Attorney for the District of New Jersey, Robert J. DelTufo. My recollection is that our first notification came during a meeting attended by Mr. DelTufo,

myself, the Special Agent in charge of the Newark Office of the Federal Bureau of Investigation, Robert C. Stewart, Attorney in Charge of the Newark Strike Force, and Special Attorney Thomas Puccio, Attorney in Charge of the Brooklyn Organized Crime Strike Force. Mr. Puccio, at that time, generally outlined the nature of the investigation. During the course of that meeting it became clear that the investigation had developed information relating to New Jersey and that there would be a role to be played by attorneys from our office. Thereafter, the United States Attorney assigned Edward J. Plaza, who was then the Executive Assistant United States Attorney for the District of New Jersey and Robert A. Weir, Jr. who was and still is the Assistant Attorney in Charge of the Newark Organized Crime Strike Force

as the two attorneys principally responsible for assisting in the development of the factual record in connection with the ABSCAM investigation. Mr. DelTufo and Mr. Stewart remained actively involved in a supervisory capacity.

Thereafter I had only fleeting and periodic contact with the investigation. I was not involved in its day-to-day activities but periodically would be consulted at key times during the course of the investigation for my recommendations and advice.

According to my best recollection, sometime during the early summer months of 1980, (perhaps as early as June of 1980), Mr. DelTufo informed me that he would be resigning in the fall because of financial pressures generated by the educational needs of his children. Later that summer I was informed by the Chief

Judge for the United States District Court that the Court had voted to appoint me United States Attorney for the District of New Jersey upon Mr. DelTufo's resignation.

During the summer of 1980, it became apparent that once Mr. DelTufo resigned it would be incumbent upon his successor to assume his role in the ABSCAM investigation. As a consequence during the mid and late summer of 1980, I began to become more familiar with the New Jersey aspects of the investigation. By that time the undercover phases of the investigation had been completed and the attorneys who had been assigned cases were actively engaged in assembling, reviewing and cataloging various items of evidence pertaining to their respective assignments. Two matters had been assigned to our office and Edward J.



Plaza and Robert A. Weir, Jr. had been engaged in assembling the relevant information and material that pertained to the involvement of Casino Gaming Commissioner Kenneth MacDonald and State Senator Joseph Maressa. By the end of the summer of 1980 I had become aware of certain facts which had necessitated a request by Bob DelTufo that two attorneys from the Public Integrity Section be assigned to the District of New Jersey to assist in completing the factual record and whatever Grand Jury investigation was to be conducted in the MacDonald and Maressa investigations. Specifically, I had been advised, and had reviewed memoranda which indicated, that Mr. Plaza and Mr. Weir had, as a result of the inexcusable conduct of certain agents and the undercover informant Melvin Weinberg, been prevented from pursuing

factual information which was necessary to the development of a complete record of the facts and circumstances surrounding both investigations.

To put this in some perspective, some background is necessary: At the time I began to become more conversant with the investigation the following had occurred -- It appeared that during the period commencing shortly after the disclosure of ABSCAM in February 1980 and continuing through June of 1980, by direction of the Department, all materials that were to be gathered by Grand Jury process were being funnelled through a centralized Grand Jury operating in the Eastern District of New York (Brooklyn). Control of all other materials, including tapes, transcripts, 302's and the like was also centralized in Brooklyn. Unfortunately, Mr. Plaza and Mr. Weir were

not receiving copies of tapes, transcripts, inventories, 302's and other like information that they requested through Brooklyn on a timely basis. Similarly, in some cases information they had requested be subpoenaed through the centralized Grand Jury was not subpoenaed because of decisions being made in Brooklyn. These decisions were not communicated to either Mr. Plaza or Mr. Weir until well after they were made. The effect of the lack of the flow of such information was to impede, to a degree, the progress of our efforts to develop a factual record sufficient to permit the investigation to proceed to the next stage. Despite the obstacles, however, Mr. Plaza and Mr. Weir had managed to assemble a considerable amount of information about each case and despite the less than desired coordination, had moved the cases

along nicely. Unfortunately, the pace was apparently not to the liking of some in the Department, and a number of suggestions had been made (I believe principally by Irving Nathan) that at least the MacDonald case be brought to indictment principally on the basis of a video tape of a meeting which MacDonald had attended when Senator Errichetti received a valise containing \$100,000. Fortunately, that pressure had been resisted because the factual record had not been adequately completed to a point that would permit a meaningful grand jury presentation, much less an indictment.

The actual event which triggered Mr. DelTufo's request for assistance from the Department occurred on June the 18th, 1980, in the office of the United States Attorney for the District of Columbia. Pursuant to a request by Assistant United

States Attorneys Roger Edelman and John Kotelly of that office, Mr. Plaza and Mr. Weir had travelled to Washington on June 17, 1980 for the purpose of participating in debriefing witnesses including the primary undercover informant/operative, Melvin Weinberg. On June 17, 1980, Mr. Plaza and Mr. Weir participated in the debriefing of a witness by the name of William Rosenberg. Mr. Rosenberg provided information which indicated that Melvin Weinberg had perpetrated a scam within a scam against the F.B.I. concerning millions of dollars in forged bank certificates of deposit.

On June 18, 1980, Mr. Plaza and Mr. Weir, at the request of Assistant United States Attorney Edelman, were invited to participate in a debriefing of Melvin Weinberg. Prior to the start of of the debriefing Mr. Edelman advised

F.B.I. Special Agents Anthony Amoroso and John Goode, who had accompanied Weinberg to the United States Attorney's Office, that in order to preclude a defense suggestion that witnesses were being prepared in an improper manner, he intended to speak to each witness individually and, therefore, to interview Weinberg outside their presence since they were also potential witnesses. Mr. Edelman's advice elicited an explosive response from Special Agent Goode, who advised Mr. Edelman that no one could speak to Weinberg without he and/or Mr. Amoroso being present. Despite Mr. Edleman's explanation that based on his experience such joint interviews were fraught with dangers, Special Agent Goode persisted and violently objected to any interview of Weinberg out of his or Special Agent Amoroso's presence. Mr. Plaza and Mr.

Weir were merely bystanders during the course of this colloquy. When Mr. Plaza spoke in any attempt to identify the problem, Mr. Goode erupted at Mr. Plaza and in a highly emotional manner indicated that Mr. Plaza and Mr. Weir were the "problem" and that among other things they and their office were the "enemy." According to Mr. Goode's very animated statements during that meeting, Mr. Goode and Mr. Amoroso and, apparently, Weinberg were disturbed by Mr. Plaza and Mr. Weir having pointed out on prior occasions (in response, I might add, to requests for their opinion), various entrapment and due process issues that were raised by Weinberg's activities and a lack of supervision during the undercover phase of the investigation. Mr. Amoroso and Mr. Goode's unexpected response and refusal to permit Weinberg to be de-

briefed out of their presence precluded Mr. Plaza and Mr. Weir from gaining any useful information from Weinberg on June 18.

Thereafter, when Mr. DelTufo attempted to address this episode, it became clear that Mr. Goode's statement, and more disturbingly his view of our office was apparently shared by individuals in the Department's supervisory chain. During the course of a telephone conversation two days after the incident, Irvin Nathan repeated Mr. Goode's characterization of the office since it was interested, in his view, only in discovering exculpatory evidence from Weinberg. I should emphasize that by this time Mr. Plaza and Mr. Weir had assembled enough information to warrant a careful and thorough debriefing of Weinberg as well as the agents who were responsible for



supervising him during the covert phase of the investigation. There were a substantial number of unrecorded conversations, as well as a number of conversations which while recorded still had to be transcribed. Additionally, there were a number of unsettling items of information which indicated that Weinberg had been receiving gifts from targets, may have fabricated evidence, and may have shared in the payoff money that had been given to targets. In order for the investigation to move forward in any responsible fashion, the most direct and practical way to explore these issues would have been for Mr. Plaza and Mr. Weir to have a reasonable opportunity to debrief the informant and the undercover agents. Based on the June 18 meeting, however, it was clear that unless some remedy was fashioned, the investig-

ation would be stymied because of the agents' intention not to cooperate. In an effort to resolve this situation, Mr. DelTufo had meetings with Phillip Heymann, who was then the Assistant Attorney General in charge of the Criminal Division as well as Mr. Nathan. While it was clear that the agents' behavior was totally unjustified, it was just as clear that it could not be addressed directly at that time without seriously sidetracking and perhaps disrupting the progress of the investigations. During the course of a meeting held at the Department on June 24, 1980, Mr. Nathan indicated that the agents and the informant would not cooperate with Weir and Plaza and any future debriefings would be unproductive because the agents would not recall facts and circumstances that were relevant to the inquiry. For

his part Mr. Heymann did not indicate that he would take any affirmative action to correct this situation. Faced with thst dilemma, Mr. DelTufo, as a pragmatic solution, requested the assignment of two independent attorneys who would essentially debrief the undercover operatives and thus permit the District of New Jersey to complete its pre-Grand Jury investigative phase of both cases. Mr. Heymann agreed to the suggestion as a practical solution which really bypassed the problem and left it to be addressed directly at some future time. It was, and I must emphasize, for that reason and that reason alone that the two attorneys from the Public Integrity Section were assigned. They were requested by the United States Attorney for the District of New Jersey as a means of hurdling an unwarranted obstacle that had

been created by the inexcusable behavior and refusal of Weinberg and the agents to cooperate in the completion of the cases.

Thus the investigations were in the following posture when I became actively involved in late August of 1980: Two attorneys from the Public Integrity Section, Reid Weingarten and Eric Holder had been assigned to Mr. DelTufo to assist in completing the factual investigation and in presenting evidence, if appropriate, to United States Grand Juries for their consideration. Mr. Plaza and Mr. Weir were assigned to brief these attorneys and to update them on all of the work they had performed.

In order to confirm all of the understandings to that point in time, I travelled to Washington on Thursday, August 28, 1980, to meet with Mr. Heymann

and Gerald McDowell who was the Attorney-in-Charge of the Public Integrity Section. The meeting was necessary in my mind because of the attitude of the Department, which seemed intent upon a quick indictment in the cases prior to the time that a complete and accurate factual record had been developed. The principal spokesman who seemed to espouse this attitude was Irvin B. Nathan. Mr. Nathan, however, did not participate in my meetings. I made clear to both Mr. Heymann and Mr. McDowell that as United States Attorney I would insist that the investigations and the Grand Jury proceedings elicit a complete and accurate picture of the activities of all individuals involved. I indicated to Mr. Heymann that while I understood that it would be impractical at that time to address the June 18th behavior of Weinberg and

the agents because they were involved in other trials, I intended to address that issue directly at an appropriate time in the future. It was agreed as a result of our meetings that the attorneys from the Public Integrity Section would continue to be assigned to New Jersey to complete the factual record and to conduct the Grand Jury presentation of the evidence in both cases under my supervision as United States Attorney. It was further agreed that the ultimate decision as to whether any charges would be proposed to the Grand Jury would be made jointly by Mr. Heymann and myself.

I think it is important for me to digress at this point to explain my concern with regard to establishing some agreement as to how the investigations would proceed once I assumed responsi-

ibility for the investigations in New Jersey. Based on my review of the situation to that point in time, it appeared that some of the earliest involvements that the undercover operative/informant and the undercover agents had with political figures in New Jersey centered around the informant's relationship with then Mayor of Camden and New Jersey State Senator Angelo Errichetti and Errichetti's subsequent introduction into the situation of Commissioner Kenneth MacDonald. By August of 1980, the complete nature of the Weinberg-Errichetti relationship and their activities relating to the involvement of MacDonald had not been fully explored. This notwithstanding the fact that this was one of the earliest aspects of the New Jersey phase of the investigation. Other cases had been tried to a conclusion and had gone through

due process hearings. But many of the issues relating to Weinberg's activities had not been adequately probed. Indeed, a substantial quantum of factual information had not been gathered and reviewed in an orderly manner. I was resistant to the idea of rushing to indictment of either MacDonald or Maressa without a thorough and complete investigation of all of the activities of Errichetti, MacDonald and Weinberg.

By the time the cases became my responsibility, not only did we have the precedent of the Third Circuit's decision in United States v. Twigg, but we had as well some idea of the nature of a due process hearing such as that which had been conducted by Judge Fullam in connection with the Janotti case in the Eastern District of Pennsylvania. It was clear that if we were to be prepared



for (and perhaps even forestall) further time consuming and expensive due process hearings, the most effective and practical way to identify any problems was through a thorough and complete investigation at the Grand Jury phase of the case. Indeed, the way the cases had developed to that point provided us with an excellent opportunity to carefully evaluate some of the issues that had been raised in the already tried cases at the Grand Jury level and not after charges had been preferred when we were under the press of court mandated deadlines. As a practical matter this was the best way to prepare for the onslaught of motions that could be expected once my indictments were preferred in either of these two cases. It was therefore a practical judgment that while we had the opportunity and the ability through the Grand Jury

process to completely develop and uncover all of the facts we should take the opportunity before making any final decision to prosecute. On a policy level, it has always been the practice of our office to utilize the Grand Jury to test our proofs and to examine in a careful and orderly fashion any exculpatory evidence that the potential target and/or his or her witnesses cared to offer. It is both expensive and time consuming to engage in such an examination after the indictment has been returned. Finally, in my view it was the duty of the prosecutor not merely to seek an indictment but rather to determine the true facts. For all of those reasons, I felt that it was important in these investigations to take advantage of the opportunity that a thorough Grand Jury investigation presented. Both Mr. McDowell and Mr.

Heymann agreed.

In addition to my concern about the MacDonald and Maressa matters, I was interested in determining whether there was any other Atlantic City information that had not been developed during the covert phase that possibly could be developed during the Grand Jury phase. Unfortunately, some promising leads had not been addressed during the undercover phase of ABSCAM and I was hopeful that we might be able to develop further information through the use of traditional Grand Jury investigative techniques.

Immediately after my conference with Mr. Heymann and Mr. McDowell, Mr. Weingarten and Mr. Holder began to come to the District on a regular basis and we commenced the formal Grand Jury investigation after they had been familiarized

with the investigative record thus far developed. As their supervisor, Mr. Holder and Mr. Weingarten did the job I expected. They were careful and thorough. During the period between September and early December of 1980, they conducted a very thorough investigation which included interviews of a number of witnesses before the Grand Jury and the review of a substantial amount of documentation. Especially with regard to the MacDonald case, the investigation began to reveal the same types of disturbing incidents as had been previously identified by Mr. Plaza and Mr. Weir. By late November they reported in a status report addressed to Mr. McDowell and I that they had identified a number of very troublesome incidents involving Weinberg. Among the items that concerned them were "countless unrecorded conversations" and

the fact that Weinberg had been totally unsupervised during the course a substantial number of contacts that were relevant to the case. Most troubling was the development of evidence that Weinberg may very well have been the source of millions of dollars of forged certificates of deposit which had been used to justify not only the continuation of ABSCAM but the payment of substantial cash bonuses to Weinberg. Finally, the investigation had uncovered additional facts which indicated that Weinberg may have received gifts from targets of the investigation unbeknownst to the FBI. While Mr. Holder and Mr. Weingarten tended to discount the credibility of the reports of Mr. Weinberg's involvement in the CD transactions especially at that point in time, they later advised me that after interviewing an FBI agent who was

most familiar with the genesis of the CD's they were firmly convinced that Weinberg was in fact the source of the CE's and that the substantial recoveries Weinberg had been credited with making were actually a product of his manipulations and fabrications.

In addition, in their November status report, Holder and Weingarten went on to advise me how the evidence they had thus far gathered seemed to undercut a proffered defense that had been submitted by Errichetti and MacDonald. In summary, the evidence in the case revealed that a total of \$125,000 had been given to Errichetti during the course of the investigation - \$25,000 had been given to him by McCarthy on January 20, 1979 and an additional \$100,000 had been given to him in MacDonald's presence on March 31, 1979. On April 3, 1979,

\$25,000 of the March 31st payment had been returned to the FBI as a result of Weinberg's efforts to somehow induce Errichetti (and MacDonald) to contribute to the repair of Abdul's damaged yacht. Errichetti through the mouth of his nephew and driver Joseph DiLorenzo suggested that Weinberg received the rest of the money as well. Specifically, DiLorenzo stated that his uncle instructed him to leave the envelope Errichetti had received from McCarthy on January 20th for Weinberg in the Long Island Hotel where Errichetti and DiLorenzo had lodged the night before and where they had indeed met Weinberg. As to the March 31st money, DiLorenzo stated that he and his uncle had returned to Long Island on Sunday, April 1st and had given the briefcase back to Weinberg at an isolated rest stop on the Long

Island Expressway. According to the evidence that was then available to them, Weingarten and Holder had tentatively concluded that DiLorenzo's account was not credible. As to the January 20th incident, they were unable to discover any evidence which would indicate that Errichetti and DiLorenzo had been registered at the hotel DiLorenzo described. Weinberg had no recollection of such a meeting. As to the March 31 - April 1, 1979 incidents, Weingarten and Holder had been provided with a copy of a tape of a telephone conversation which by its terms indicated a conversation had been initiated by Weinberg in New York to Errichetti in Camden at approximately 2:30 p.m. on Sunday, April 1, 1979 - at approximately the time DiLorenzo stated he and his uncle were in Long Island for the purpose of their secret rendezvous



with Weinberg at the rest stop on the Long Island Expressway. Weinberg denied the meeting had taken place.

By the end of November, 1980 it appeared that Errichetti and MacDonald were proffering a false defense through DiLorenzo. DiLorenzo's account of the January 20th incident could not be corroborated and there was a recorded telephone conversation which contradicted DiLorenzo's assertions that DiLorenzo, Errichetti and Weinberg had met on April 1st. The recorded telephone conversation seemed to totally destroy DiLorenzo's account since Errichetti and Weinberg could not be in two different places at the same time. Thus, it appeared that the statements of DiLorenzo were totally unworthy of belief.

I must emphasize that the foregoing conclusions were made by Weingarten and

Holder on the basis of evidence that was the made available to them. What they had not seen and what they later saw dramatically changed their view. What they had not seen or reviewed were telephone toll records that had been maintained on Melvin Weinberg's telephone. These toll records had been requested by Messrs. Plaza and Weir well over a year before Weingarten and Holder had become involved. What happened when Weingarten and Holder finally were permitted access to these toll records was the following: First, as to January 19-20, 1979 events, they discovered that a credit card call charged to Weinberg's credit card had been placed from the very hotel that DiLorenzo had described as being the hotel where he and his uncle met Weinberg and stayed on the night of January 19, 1979. When confronted with

the evidence, Weinberg had an amazing recollection that indeed he had met with Errichetti and DiLorenzo at that hotel on January 19, 1979. This meeting between the three was not known by an undercover operative or agent during the course of the covert phase of the investigation. Weinberg still maintained, however, that he did not receive any of the money from Errichetti and DiLorenzo on January 20, 1979. With regard to the March 31-April 1, 1979 incidents, the toll records upon examination failed to reveal any telephone call between Weinberg and Errichetti occurring at or about 2:30 p.m. on April 1, 1979. When Mr. Weingarten made this discovery, which was some time in mid-December of 1980, the discovery so startled him that he called me to personally inform me. In summary, he reported as follows:

He recounted the history of the testimony of Joseph DiLorenzo in the Meyers case that had been tried in the Eastern District of New York. Mr. DiLorenzo had testified that he had driven Mayor Errichetti back to Long Island to meet Mr. Weinberg on April 1, 1979, the day after the \$100,000 had been transferred to Errichetti in MacDonald's presence at Abdul's offices. This testimony was offered by Mr. DiLorenzo to impeach Weinberg and the government's theory that Errichetti had retained \$100,000. In response to DiLorenzo's testimony, the government, according to Mr. Weingarten, had introduced the tape recording of the April 1, 1979, 2:30 p.m. telephone conversation between Weinberg in Long Island and Errichetti in Camden. The tape recording had been used to effectively impeach DiLorenzo's account

of a meeting with Weinberg and Errichetti's alleged return to the valise that he had received the day before in MacDonald's presence at Abdul's offices. According to Mr. Weingarten, he was unable to find an entry for a call at 2:30 p.m. on April 1, 1979, on Weinberg's telephone toll records which would corroborate the time of the conversation between Weinberg and Errichetti as expressed on the tape. Instead, the only call Weingarten found on that day was a call initiated by Weingerg to Errichetti at approximately 4:54 p.m. on April 1, 1979. Mr. Weingarten noted in particular that the 2:30 p.m. time for the tape recording had been established by a verbal preamble contained on the tape recording itself. The preamble had been placed on the tape by Weinberg. According to Mr. Weingarten, this was the only tape

recording of a conversation he had come across during the investigation that had such a preamble establishing the time the call was initiated. After Mr. Weingarten made this discovery, he contacted Weinberg who was unable to provide a satisfactory explanation for the discrepancy. Mr. Weingarten indicated that the FBI had also confronted Weinberg about the discrepancy and that Weinberg did not offer any explanation except speculation that perhaps he had attempted to initiate the call at 2:30 p.m. but was unsuccessful in completing it until 4:54 p.m. The FBI, according to Mr. Weingarten, was in the process of having the original tape examined by an expert. Weinberg, of course, continued to deny he had met Errichetti on April 1, 1979.

Just prior to Weingarten's discovery of the April 1, 1979, tape dis-

crepancy, we had agreed that for the purpose of making an orderly evaluation of the prosecutive potential of the cases, Mr. Weingarten and Mr. Holder should begin to prepare prosecution memoranda which set out the facts they had developed, the offenses that appeared to have been committed as well as the potential defenses that would be available based on the facts as we then knew them. When Weingarten advised me of the tape discrepancy, I instructed him to continue to develop the memorandum factoring in the information so that a studied evaluation of it could be made in the context of the overall case. While that was my intent, my ability to have a complete picture of the case, despite Weingarten's and Holder's excellent efforts, still faced one major obstacle. At this point, I must back up for just a moment. At

the beginning of my involvement in the investigation, I had made it clear, not only to Weingarten, Holder, McDowell and Heymann that I was intent on a full and complete investigation, but more importantly, I had made that point to the Grand Jury at the beginning of their review of the case. Pursuant to that intention, I had indicated early in the investigation that I expected the undercover operatives, including Weinberg, to testify before the Grand Jury in the District of New Jersey. By early December, it appeared that the idea was meeting with some resistance in Washington. While not directly stated to me by any member of the Department's leadership, Mr. Holder and Mr. Weingarten indicated to me that they were receiving subtle messages not to call Weinberg and/or the agents before the Grand Jury and that



my intention to have Weinberg and the agents testify was putting both of them in the middle of what they believed would be an unpleasant confrontation with the Department. Because I did not wish to place either of them in an uncomfortable position, or initiate an unnecessary dispute between myself and the Department, which could delay the cases, I decided that in order to determine whether the testimony was absolutely necessary, I would have their prior public testimony reviewed in an effort to determine if any of the issues that concerned us had already been satisfactorily resolved by testimony in prior public proceedings. If it had, then that testimony could be used to satisfy our obligation to the Grand Jury and if it had not, then there would not be any valid reason for the Department to resist a request to have

them testify before the Grand Jury. To that end, I requested that Mr. Weingarten and Mr. Holder assemble all of the transcripts that had been generated as a result of the afrious trials and due process hearings. In accordance with my instructions, they gathered together a number of transcripts which I assigned to Mr. Plaza and Mr. Weir for review since they were most familiar with many of the issues, both factual and legal, that had arisen during the course of the investigation.

The transcripts were brought to New Jersey on December 3, 1980. On that day, I also had a meeting with Mr. Weingarten and Mr. Holder, who indicated that the Departmental leadership (Mr. Heymann, Mr. McDowell and Mr. Nathan) had indicated that both matters should be concluded by the preference of charges by

December 18, 1980. As of December 3, no final prosecution memorandum had been prepared and, as I have indicated earlier, there were a number of questions concerning Weinberg's activities still to be resolved, as well as issues relating to the appropriateness of charges and the legal theories upon which charges would be preferred. Additionally, and perhaps most importantly, none of the undercover agents nor Weinberg had testified before the Grand Jury. As a result of the meeting on December 3, it was agreed that a prosecution memorandum would be constructed in accordance with my directions and that the December 18 date would be utilized for further Grand Jury work that had to be done before a final decision was made. After the conclusion of the meeting, Mr. Weingarten approached me privately and indicated that "Washington" wanted him to determine

what my position or reaction would be to transferring the MacDonald matter to the Eastern District of New York in order to avoid the impact of the Twigg decision. I indicated to Mr. Weingarten that in view of the substantial effort that both he and Mr. Holder had expended in presenting the case to the Grand Jury in New Jersey, I did not believe it was appropriate to make such a decision. I further indicated that I was surprised by the suggestion and did not see the necessity of addressing the issue at that time since we had yet to make a final prosecution decision. Mr. Weingarten indicated that it was his personal preference to stay in New Jersey and that he had only been instructed to gauge my reaction to the proposal.

On Thursday, December 4, after I had a chance to reflect further on the

transfer question, I indicated to Mr. McMurray, another attorney who was assisting Mr. Holder and Mr. Weingarten, that he should advise Mr. Weingarten that I thought about the proposal some more and that I firmly opposed any transfer of the matter since I believed it would be viewed as forum shopping and an abuse of the Grand Jury in the District of New Jersey.

Between December 3 and December 12, 1980, Mr. Plaza and Mr. Weir reviewed all of the materials that had been provided on December 3. On December 12, Mr. Plaza and Mr. Weir provided me with a draft report of their findings. I reviewed the report and requested that they make certain revisions and finalize the report so that I could forward it to the appropriate people within the Department. As a result, they produced a memorandum

of 14 pages dated December 17, 1980, which was addressed to myself, Mr. Heymann, and the United States Attorney for the District of Columbia, Charles F.C. Ruff. The purpose of the memorandum was to document for Mr. Heymann, myself and Mr. Ruff the fact that certain testimony that they had reviewed (given in both the Criden and Meyer cases) conflicted with testimony and other information that they had received during the course of their involvement in the overall ABSCAM investigation. The conflicts related principally to three areas: (1) instructions that had been given to the undercover operative, Melvin Weinberg, during the undercover phase of the investigation; (2) certain testimony relating to compensation paid by the government to Weinberg; and (3) certain testimony relating to gifts allegedly received by Weinberg

from ABSCAM defendants and targets.

After I reviewed the memorandum, I immediately forwarded it to Mr. Ruff and Mr. Heymann. I also provided Eric Holder and Reid Weingarten with a copy of the memorandum. By the time of the Plaza and Weir memorandum, at least Mr. Weingarten, who had discovered the information in Weinberg's toll records, as well as further information relating to Weinberg's involvement in supplying false certificates of deposit, was convinced that he could no longer rely on Weinberg and that any future ABSCAM prosecutions would have to be evaluated on the assumption that Weinberg would not be a witness or would be a witness only to those events which the government could fully corroborate with other reliable evidence.

Despite the discrepancies that had been discovered, I advised both Weingarten

and Holder to continue to prepare appropriate memoranda for both matters so that we would be in a position to make some prosecutive evaluations in both matters by early January, 1981.

Between December 17 and January 7, nothing was heard from either of the two other addressees of the December 17 memorandum.

On January 7, 1981, I received the first notification that the memorandum had received attention by the Department. At approximately 3 o'clock in the afternoon Mr. McDowell called to advise me that the matters that had been set out in the Plaza and Weir memorandum had been disclosed to the defense in the ABSCAM cases then on trial. According to Mr. McDowell's calls, the information Plaza and Weir had forwarded was summarized and incorporated into a memorandum



that had been prepared by Mr. Nathan, and the Nathan memorandum was the actual document being disclosed. Mr. McDowell called to alert me to this fact and to advise me that the deputy chief of his section, William Hendricks, had been designated to be the focal point for any contacts that might be made by defense counsel as a result of the Nathan memorandum's disclosure. According to Mr. McDowell, the initial disclosures were being made in the Lederer case then being tried in Brooklyn and in the Kelly case which was being tried in the District of Columbia. According to Mr. McDowell, all judges and defense counsel in the ABSCAM related cases were expected to have a copy of the memorandum by the end of that week. Mr. McDowell asked that any contacts by defense counsel with our office be referred to Mr. Hendricks for

coordination. He also advised me that Mr. Hendricks was being assigned the responsibility of debriefing Mr. Plaza and Mr. Weir about the information they had identified in their memorandum of December 17.

At approximately 5:30 on January 7, I received the second telephone call pertaining to the disclosure of the information contained in the Plaza and Weir memorandum. At approximately 5:30 Thomas Puccio, Attorney in Charge of the Brooklyn Strike Force, called to advise that Judge Pratt had ordered that he produce Mr. Plaza and Mr. Weir on January 8, 1980, at the request of the defense in the Lederer case. In response to my questioning, Mr. Puccio indicated that he did not know what the defense intended to do or how they intended to use Mr. Plaza and Mr. Weir. I recontacted

Mr. Puccio after our initial conversation to inquire whether any agents of the Newark FBI office were also being called since at least two of them also had information relevant to some of the items that had been identified by Plaza and Weir. Mr. Puccio indicated that no arrangements were being made for the appearance of the two agents from the Newark FBI office. Mr. Puccio further advised me that he had spoken to the two agents and that they had contradicted Mr. Plaza and Mr. Weir and, indeed, that if Plaza and Weir testified, he might call both agents to the stand to contradict their testimony.

As a result of Mr. Puccio's call, I attempted to contact the Assistant Attorney General of the Criminal Division, Philip Heymann, for the purpose of securing appropriate permission for Mr. Plaza and Mr. Weir to appear and testify

the next day. Mr. Heymann was not at his office, but his office was able to provide me with a location for him at a hotel in Palm Beach, Florida. I was unable to reach Mr. Heymann until 7:45 in the evening. I advised Mr. Heymann of the situation and the advice I had received from Mr. Puccio about the requirement that Mr. Plaza and Mr. Weir appear in Brooklyn the next day in connection with the Lederer case. I specifically requested Mr. Heymann's authority to have Mr. Plaza and Mr. Weir appear. Mr. Heymann advised me that both attorneys had permission to appear and to testify and that he wanted every material and relevant fact to come out. He specifically authorized them to testify, and to be interviewed by defense counsel so long as government counsel was present. I specifically requested Mr. Heymann's

advice as to the authority of Mr. Plaza and Mr. Weir to disclose internal memoranda if they needed to refer to such to illustrate or document their testimony. When I raised the subject, Mr. Heymann became very agitated and indicated at that point in our conversation that he was very displeased with the fact that Plaza and Weir had written their memorandum and began to imply that somehow it was an improper act. Mr. Heymann did not elaborate on why he felt so upset by the fact that Plaza and Weir had written down their observations, and I indicated to him that I saw nothing improper nor indeed inappropriate as to the method they had used to document and communicate their findings to us. I told Mr. Heymann that I believed it was the professional way to insure that the facts were properly forwarded to the individuals who had the

responsibility to make decisions. Mr. Heymann digressed and related how disappointed he was with an Assistant United States Attorney in the Eastern District who had permitted the disclosure of certain internal memoranda in connection with the cases that had been tried before Judge Fullam. Mr. Heymann engaged in a monologue indicating that he wanted all memoranda reviewed by government counsel for work product or other privileges and that if anyone was requested to produce any memoranda, they should produce them to the court in camera so government counsel would have the opportunity to review the documents. In view of the shortness of time involved with regard to Mr. Plaza and Mr. Weir's appearance, Mr. Heymann suggested that in this circumstance that Mr. Plaza and Mr. Weir not bring any of the memoranda

that they had prepared, which I informed him were extensive, except for the most recent December 17 memorandum which he indicated they should review before they went to court. Subsequent to my conversation with Mr. Heymann, I advised Assistant United States Attorney Peter Bennett of my office who I had assigned to accompany Mr. Plaza and Mr. Weir to the Eastern District of New York of Mr. Heymann's instructions. Mr. Bennett communicated those instructions to Mr. Plaza and Mr. Weir, and on January 8, 1981, Mr. Plaza and Mr. Weir appeared in the Eastern District of New York in accordance with Judge Pratt's directive.

By the time Mr. Plaza and Mr. Weir appeared in Brooklyn on January 8, 1981, neither they nor I had seen the memorandum that had been prepared by Mr. Nathan ostensibly summarizing the substance of

the material that Plaza and Weir had set forth in the December 17, 1980 memorandum. Eric Holder, one of the Public Integrity attorneys who had been working on the MacDonald and Maressa matters, was scheduled to be in New Jersey on January 8 and I requested Mr. McDowell provide Mr. Holder with a copy of the memorandum so that I could review it on January 8. Mr. Holder delivered the copy of the Nathan memorandum dated January 6, 1981, which I believe the Subcommittee has already seen. At the time Mr. Holder delivered the copy to me, he indicated to me that he was very disturbed by the contents of the memorandum and especially with the assertions in the memorandum which indicated that Mr. Plaza and Mr. Weir had done very little, if any, work on the MacDonald and Maressa matters. He stated that he knew that the statement



was not correct and was very concerned that such a statement had been made.

My initial review of the Nathan memorandum revealed that it was neither a dispassionate nor objective recitation or summarization of the information that had been forwarded to the Department in the memorandum of December 17, 1980, but was instead an attempt, in some ways transparent, to dissemble that information, to attack the credibility of Mr. Plaza and Mr. Weir, and to thereby deter defense attorneys from relying on their information. I will not at this time go into a detailed analysis of the Nathan memorandum except to say that by a memorandum dated January 28, 1981, I specifically and in detail identified a number of the material inaccuracies of the Nathan memorandum. I strongly recommend that this committee seek a copy

of my memorandum which was addressed to the then Deputy Attorney General, Charles B. Renfrew, and was prepared by me in accordance with Attorney General Civiletti's instructions which were issued to me in person on January 14, 1981. The most disturbing aspect of the memorandum when I first viewed it on January 8, was the statement and suggestion that Mr. Plaza and Mr. Weir had been removed from involvement in the ABSCAM cases because they had done little, if any, meaningful work. Both Mr. Nathan and Mr. Heymann knew this to be absolutely false. Because it was absolutely clear after reading the Nathan memorandum that instead of insuring that potential exculpatory evidence was properly disclosed, Mr. Nathan and Mr. Heymann had embarked on a course designed to obscure the information, I prepared a letter dated January 9, 1981

to Mr. Heymann in which I indicated my strong disagreement with the memorandum's factual statements and his publication of it and further my view that his and Mr. Nathan's involvement in its preparation and publication disqualified them from a further development of the facts surrounding the disclosures. It was my view that his participation and further involvement might be perceived as an attempt to thwart or otherwise chill the development of the information that Mr. Plaza and Mr. Weir had attempted to communicate to the Department for evaluation and, if appropriate, for dissemination to the courts then presiding over the ABSCAM cases. I also wrote to the Attorney General and the Deputy Attorney General and provided each of them with a copy of my letter to Mr. Heymann. Those letters were also dated January 9,

1981.

I should add for this Subcommittee's information that shortly after we were informed that the Nathan memorandum had been constructed and disseminated to defense counsel, but before we had seen the memorandum, my office was inundated with telephone calls from various members of the press both in New Jersey and in Washington, D. C. inquiring about our role in ABSCAM. We could not comment.

On the morning of January 9, 1982, Mr. Plaza presented me with a copy of a letter that had been signed by he and Mr. Weir and was addressed to the four District Court Judges then presiding over ABSCAM cases. That letter read as follows:

"My Dear Judges: Pursuant to our obligations as prosecutors, on December 18, 1980 we delivered a copy of the enclosed memorandum to Assistant Attorney General, Philip B. Heymann. Despite the fact that Mr. Irvin Nathan and Mr. Thomas Puccio are potential

witnesses, they were assigned a responsibility for investigating statements made in our memorandum and for authoring a memorandum addressed to Mr. Heymann dated January 6, 1981.

On January 7, 1981 at approximately 4:30 P.M., we were called by William Hendricks, Public Integrity Section, Criminal Division, Department of Justice, who advised us that he had been assigned by Gerald McDowell, who also witnessed some of the events described in our memorandum, to conduct an interview of us in the presence of an FBI agent. This was the first contact we had with anyone from the Department of Justice after delivery of our memorandum on December 18, 1980.

At approximately 6:30 P.M. on January 7, 1981, we were advised by Mr. Thomas Puccio that the Honorable George C. Pratt had ordered us to report to his courtroom the following day, January 8, 1981 at 9:15 A.M. Upon our arrival in the Eastern District of New York, we made an attempt to secure a copy of the Nathan memorandum, but Mr. Puccio refused to supply us with a copy. Later that afternoon, we were provided with a copy of the memorandum, apparently at the urging of the

defense. We both testified before George Pratt that afternoon. In an obvious attempt to destroy our reputations, the Nathan memorandum was intentionally leaked to the press. The allegations in that memorandum are malicious, slanderous and can easily be proven patently false. We bring this matter to your attention for whatever action you may deem appropriate."

Attached to the letter was a copy of the original December 17, 1980 memorandum that had been prepared by Mr. Plaza and Mr. Weir. My examination of the Nathan memorandum as compared to the information that had been documented by Plaza and Weir in their memorandum of December 17, indicated without question that not only was the Nathan memorandum slanderous, but to the extent that it purported to communicate the information that Plaza and Weir had set forth in their December 17, 1980 memorandum, it

was defective to a degree bordering on intentional deception. Mr. Plaza and Mr. Weir had performed as professional prosecutors and had in accordance with my instructions prepared an accurate and substantially factual memorandum on December 17, 1980. In view of the events that had transpired since that time and the Department's complete and utter failure to evaluate in any professional way that information and, if appropriate, communicate it to the courts, I felt that I could not and should not prevent the transmission of the source document to the judges who had responsibility for overseeing each of the ABSCAM cases. I sent a copy of the letter to each of the three United States Attorneys in whose districts the cases were pending. In addition, I called the Attorney General of the United States and left a message

with a member of his staff and explained what had transpired. In addition, I called each United States Attorney to alert them that the letter had been transmitted to the judges in their districts.

Shortly after my telephone calls to each of the United States Attorneys, I received a telephone call from the Deputy Attorney General, Charles B. Renfrew. By way of background noise I determined that Mr. Renfrew was calling me from an airport terminal somewhere, and in a very authoritative tone and abrupt manner he began to challenge me and to question me about the actions of my office. According to Mr. Renfrew, Mr. Nathan had informed him that a letter had been sent to the ABSCAM judges by Mr. Plaza and Mr. Weir. I advised Mr. Renfrew that, in fact, a letter had been sent and that I had sent letters to him and the Attorney



General on that very day concerning the events that had taken place. Because of his challenging and accusatory manner, I asked Mr. Renfrew whether he was aware of or had read either the Plaza and Weir memorandum or the Nathan memorandum. He indicated that he had not. I indicated that the Plaza and Weir memorandum had been forwarded to the Department in December 1980 and was allegedly the source document for the Nathan memorandum and that since the Nathan memorandum had been released, I did not see any proscription to providing the Courts with the source document. Mr. Renfrew specifically asked me if Plaza and Weir's letter had already been sent because if it had not, he wanted it stopped. I advised Mr. Renfrew that the letter had been sent and it could not be stopped. The call was most unpleasant and lasted less than three

minutes in duration.

At approximately 5:30, I received a telephone call from Assistant Attorney General Heymann, who advised that Mr. Renfrew had directed that I report to Washington, D.C. on the following Monday to meet with him to discuss the situation. I advised Mr. Heymann that I had sent a letter to him on that day advising him that I felt that he and everyone under his supervision should be enjoined and barred from further involvement in the development of the facts in this matter, but in view of Mr. Renfrew's directive I would be in Washington on Monday, January 12, 1981.

On Monday, January 12, 1981, I travelled to Washington, D.C. accompanied by the Executive Assistant United States Attorney Charles J. Walsh. At approximately 10:45, I met with Mr. Heymann who

had assembled an entourage of individuals in his office. Mr. Heymann began to set forth a recitation of his perceptions of the Nathan memorandum as a predicate to demanding that I specify the precise inaccuracies in the Nathan memorandum. Mr. Heymann described those in attendance as individuals familiar with the situation and some as people who had actually participated in the preparation of the Nathan memorandum. At the end of Mr. Heymann's monologue, I indicated to him that I would not engage in a dialogue with him with regard to the inaccuracies of the Nathan memorandum and that I believed that I had stated my position clearly in my letter of January 9, to the effect that he and all personnel under his supervision should be barred and enjoined from further developing the facts in this matter. I

further advised him that I believed that the very meeting we were then involved in was unwise and could be viewed in the future as an attempt to chill and thwart the development of the facts surrounding the whole situation. I requested a meeting with the Attorney General. Mr. Heymann interrupted the meeting and called the Attorney General's office and secured an appointment for both he and I to see the Attorney General on January 14, 1981. The meeting with Mr. Heymann lasted less than fifteen minutes.

On January 14, 1981, I again travelled to Washington, D.C. to meet with Attorney General Civiletti. The meeting with the Attorney General occurred in the early afternoon of January 14, 1981. I outlined for the Attorney General the current status of the situation and my view that the Criminal Division should

be barred and enjoined from further involvement in the development of the facts that had been discovered by Mr. Plaza and Mr. Weir and professionally documented in their memorandum of December 17, 1980. I also advised the Attorney General that the Nathan memorandum was false in a number of material respects, one of which involved an allegation and suggestion that Mr. Plaza and Mr. Weir were removed from the New Jersey investigations because they had failed to do little, if any, meaningful work. I advised the Attorney General that the statement was false. Mr. Heymann at that point in the meeting acknowledged, as he put it, "tragically" that the statement had been an error and a mistake and that, in fact, he had come to determine that Mr. Plaza and Mr. Weir had done extensive work with regard to that

investigation. I must digress at this point to emphasize for this Subcommittee that, notwithstanding Mr. Heymann's acknowledgment that the statements contained in the Nathan memorandum concerning Mr. Plaza and Mr. Weir's professional performance were false, no one from that date to this has corrected the public record about either of these individuals and the fact that the Nathan memorandum is totally false as it pertains to them and their activities. It is an outrage and a tragic event when two dedicated and professional prosecutors are intentionally villified in a false document which was purposely leaked to the press with the intent to blacken their reputations and to dissuade counsel and the courts from considering their information: That wrong was not corrected by those in authority once they determined those

facts were false. Never from the date that Mr. Heymann acknowledged that the statement was false has the public record been corrected with regard to Mr. Plaza and Mr. Weir. If this committee does nothing else it must correct the record. Ed Plaza and Bob Weir have been professional prosecutors, one for a decade and the other for longer than that, whose careers and records are unblemished save this single scurrilous and false accusation in a memorandum that was published with the intent to chill and thwart the development of the true facts surrounding the activities of Melvin Weinberg and the activities of the undercover operatives in ABSCAM. I ask that this Subcommittee, as a part of whatever finding it makes, make the finding that Edward Plaza and Robert Weir performed in the manner that is consistent with the highest traditions

of justice under our system.

As a result of my presentation, Attorney General Civiletti issued an order dated January 14, 1981, a copy of which is attached to this statement and is made part hereof. That order, by its terms, was designed to professionally and objectively identify all of the facts surrounding the information that had been set forth by Plaza and Weir in the December 17, 1980 memorandum, while at the same time safeguarding the rights of the defendants and ensuring that the investigations that were underway continued to proceed in an orderly fashion.

At the very moment that I was meeting with the Attorney General, unbeknownst to me, Mr. Plaza and Mr. Weir had been again summoned to Brooklyn in connection with another ABSCAM proceeding. No instructions were issued to Mr. Plaza



or to Mr. Weir as to the meaning or the reason for this appearance. In an effort not to interrupt the proceedings or to delay them because of his inability to refer to memoranda which recorded his recollections, Mr. Plaza took all of his memoranda with him on that occasion. During the course of his questioning, Mr. Plaza was requested to produce some of those memoranda and when he attempted to surrender the memoranda in camera, he was rebuffed by the Judge. In addition, government counsel sat idly by during the colloquy between Mr. Plaza and the Judge and as a result, Mr. Plaza was required to surrender documents to the defense. When defense counsel indicated that they needed time to review the documents and that the documents contained important information, the Judge retrenched from his original direc-

tion and retrieved the documents from defense counsel and thereafter refused to disclose a substantial portion of the documents that Mr. Plaza had initially offered to him for inspection in camera. At no time throughout the course of this entire episode was Mr. Plaza provided with any instructions or guidance by government counsel or anyone from the Department of Justice, and during the course of the colloquy which led to the disclosure of the documents, government counsel sat quietly without interposing any objection or offering any advice. It was on the basis of this disclosure that the first breach of Attorney General Civiletti's Order occurred on January 15, 1981. By letter dated January 15, 1981, Philip B. Heymann without prior authorization of Attorney General Civiletti, issued a letter which mischar-

acterized the instructions that Mr. Plaza had received in connection with the earlier Lederer appearance and further characterized Plaza and Weir as "simply defense witnesses." To remind you, Mr. Heymann had never directed that Plaza and Weir not surrender any documents but had merely suggested that on that occasion because of the shortness of time they not bring their documents with them when they appeared during the course of their appearance in the Lederer case. Mr. Plaza and Mr. Weir had been provided with no instructions with regard to this second appearance, and were in fact left totally at sea by government counsel's failure to interpose any objection or offer any advice or guidance. Mr. Heymann's characterization of them as having violated some supposed directive was totally inaccurate. The letter was the beginning

of a series of events which clearly undermined not only the specific directives but the spirit and the import of Attorney General Civiletti's Order of January 14, 1981. I responded to Mr. Heymann's letter by advising him that this was just the type of ex-parte communication that was precluded by Attorney General Civiletti's Order of January 14, 1981. I also criticized Mr. Heymann for not having taken the opportunity to correct the record with regard to the false statements that had been made in the Nathan's memorandum which he had acknowledged were incorrect during our meeting with Attorney General Civiletti. I had determined from members of Attorney General Civiletti's staff that Mr. Heymann had not received authorization to send the letter from the Attorney General or his staff.

A central provision of Attorney

General Civiletti's Order was that Mr. Plaza and Mr. Weir be debriefed regarding their participation in ABSCAM as soon as possible. The purpose of the debriefing was ostensibly to permit the Department to determine whether any information resulting from the debriefings ought to be furnished to the Courts. Particular attention was to have been paid to any information relevant to due process hearings in the Eastern District of New York, the District of Columbia, and the Eastern District of Pennsylvania. Unfortunately, the Attorney General's Order was not implemented. While debriefings of Mr. Plaza and Mr. Weir did take place, they were designed not to discover the objective facts, but rather were clearly aimed at attempting to develop impeachment evidence that could be used in the event either Mr. Plaza

and Mr. Weir testified again in an ABSCAM related matter. It was a wasted effort - for there was no impeaching evidence to be developed. Mr. Plaza's debriefing, which had been ongoing for several days, was abruptly interrupted in order that Mr. Weir's debriefing could take place shortly before Mr. Weir was scheduled to be called as a witness in Brooklyn. No report or other transcript of the debriefings has ever been prepared to my knowledge and, indeed, the debriefings of Plaza and Weir were essentially abandoned after the Brooklyn due process hearings were concluded. At no time was there any meaningful effort evident to systematically review the items that Plaza and Weir had identified and to evaluate that information from the standpoint of the government's obligation to possibly disclose it as required by

Attorney General Civiletti's Order.

Unfortunately, by the time these events took place, Attorney General Civiletti had left the Department.


It was in part as a result of my concern about the manner in which the debriefings were to be conducted that I requested an opportunity to meet with the then Acting Attorney General, Charles B. Renfrew, on January 22, 1981 before any debriefing took place. Because Attorney General Civiletti had already left the Department, and in view of the unpleasant telephone conversation with Mr. Renfrew on January 9, 1981, I felt it would be appropriate to meet with him not only to clear the air, but to also confirm Attorney General Civiletti's directions. I also had been informed that one of the FBI agents who would be participating in Plaza's and Weir's de-

briefings was an agent who had previously been involved in the ABSCAM investigation and who reportedly had forcefully expressed the view that the due process issues were nonsense. Given this agent's participation, I was concerned that the debriefings to be conducted the following week might be a perversion of the Attorney General Civiletti's Order and might be used as a subterfuge to woodshed Plaza and Weir before they were called to testify in further due process hearings. I thought that this was a serious enough alteration of the Attorney General Civiletti's Order so as to warrant the personal involvement of the Acting Attorney General.

The meeting with the Deputy Attorney General, then Acting Attorney General Charles B. Renfrew, was, to put it mildly, a disaster. Mr. Renfrew was not interested in any of my concerns. He



neither cared to listen to nor address the issues that I was raising nor was he concerned as it turned out with implementing the Attorney General's Order to insure that Plaza and Weir were fully and adequately debriefed and that their information was carefully evaluated and disseminated to those judges and/or attorneys to whom it should have been disclosed. Indeed, Mr. Renfrew attempted to belittle my concerns and in essence chastised me for being too defense oriented. Instead of addressing my concerns, the meeting turned into an inquisition conducted by Mr. Renfrew and another participant whose presence was entirely inappropriate: Irvin B. Nathan. Mr. Renfrew spent the better part of the meeting challenging me and my Executive Assistant United States Attorney Charles Walsh, as to the act-



ivities of our office and the activities of Plaza and Weir, and especially Mr. Plaza's disclosures of the documents in open court on January 14, 1981. I repeatedly tried to refocus the meeting on the issues that had prompted my request for the meeting, that is how we proceed to implement former Attorney General Civiletti's Order that Plaza and Weir be debriefed in order to properly evaluate the potentially exculpatory evidence they have developed. The constant theme that ran throughout the meeting parroted by both Nathan and Renfrew was that they were not interested in discovering, much less disclosing, any facts or information that undermined the ABSCAM prosecutions and that they stood fully behind the ABSCAM prosecutions. The meeting was a horrible experience punctuated with interruptions, accusations, raising of

voices and accomplished little, other than to make it absolutely clear that Mr. Renfrew was totally hostile to the position that we had taken and would not provide any support for the implementation of former Attorney General Civiletti's Order. It was also clear that he was more interested in seeing that Mr. Plaza and Mr. Weir and I were disciplined for whatever reason in an effort to justify and continue to justify the tactics that had been utilized in the ABSCAM investigation, and the memorandum that had been written by Mr. Nathan. There was not one shred of understanding or objectivity demonstrated by him during the course of the meeting and I must say I was not surprised at all when he subsequently recommended that Mr. Plaza, Mr. Weir and I be disciplined for our actions. Unfortunately, his

report to the Office of Professional Responsibility as to the occurrences of that meeting is in sharp contrast to my recollections and recollections of my Executive Assistant United States Attorney. I can only assume, since I have not seen the report of the Office of Professional Responsibility, that they also found some sharp differences between Mr. Renfrew's view of our actions and what actually happened. As I have said, I have not seen that report; indeed, I have been denied access to it. I was informed that no discipline was recommended by the Office of Professional Responsibility after a full review of the situation and I can only assume that its conclusion is the result of its disagreement with Mr. Renfrew's view of the actions of Mr. Plaza and Mr. Weir and myself.

Despite the obvious lack of support

from Mr. Renfrew, I was determined upon my return to New Jersey to continue to implement Attorney General Civiletti's Order with or without his support. As a result, Mr. Plaza and Mr. Weir both submitted themselves to interviews by an attorney at the Public Integrity Section and with my concurrence specifically requested that those interviews be taped so that there would be a verbatim record of what transpired. This was in my view the intent of Attorney General Civiletti so that there would be an accurate record of all of the information possessed by Mr. Plaza and Mr. Weir. I have been advised that copies of a portion of the tapes that were provided to Mr. Plaza are inaudible. As I said earlier, I do not believe that there has been any compilation or final report issued by anyone who was charged with the respons-

ibility of debriefing Mr. Plaza and Mr. Weir and thus the order of Attorney General Civiletti that there be a complete and full review of all that information has not been implemented to date.

Attorney General Civiletti also requested that I prepare and submit to the Deputy Attorney General not later than January 28, 1981, a memorandum that demonstrated with particularity any ways in which the Nathan memorandum inaccurately or unfairly attacked the integrity of Mr. Plaza and Mr. Weir and unfairly criticized their professional conduct. I prepared that memorandum and it was forwarded to Mr. Renfrew on January 28, 1981. I note for your information that when Mr. Renfrew recommended to the Office of Professional Responsibility that Mr. Plaza, Mr. Weir and I be disciplined, he conspicuously failed to

include a copy of that memorandum. That memorandum which should be available to this Committee specifically and in detail points out the inaccuracies of the Nathan memorandum. Indeed, by the time I had my meeting with Mr. Renfrew, it appeared that the Nathan memorandum was more inaccurate than we had ever suspected. In fact, it appeared that Nathan and to an extent, Thomas Puccio and Philip Heymann, had intentionally misled people, both inside and outside the Department into believing that Plaza and Weir's account of a particular meeting of August 9, 1979, had not been corroborated by the other attendees at the meeting. That account turned out to be absolutely false. Despite the Nathan memorandum's implication and Mr. Puccio's statements to me on January 7 that he had interviewed the agents from New Jersey and

that they contradicted Mr. Plaza and Mr. Weir's account of that crucial meeting, those agents testified under oath before Judge Pratt and essentially corroborated all of the material aspects of Mr. Plaza and Mr. Weir's account of that meeting. More disturbing than that disclosure was the fact that the agents testified that they had accurately reported their recollections to Mr. Puccio on December 29, 1980, long before the Nathan memorandum was prepared and disclosed and well before Puccio's statements to me on January 7, 1981.

After my meeting with Mr. Renfrew on January 22, 1981, I was effectively superseded with regard to both the MacDonald and Maressa matters. In his Order of January 14, 1981, Attorney General Civiletti had directed that the Criminal Division, not later than



January 23, 1981, make a recommendation to the Deputy Attorney General whether to seek an indictment of New Jersey Senator Joseph Maressa and Commissioner MacDonald. The Order provided that I was to provide to Mr. Renfrew, not later than February 9, 1981, any views I had regarding the appropriateness of indictments or the manner in which the cases should be handled. The Attorney General clearly envisioned providing my office with at least two weeks in which to review the recommendation of the Criminal Division. Contrary to that directive the Criminal Division's memorandum was parcelled out to us in sections and we were given initially only three days in which to respond or to forego the opportunity of making any comment with regard to the recommendation in the MacDonald case. No recommendation was forth-

coming in the Maressa case. Because of the intervention, I believe, of Acting Assistant Attorney General John C. Keeney, that period of time was extended to permit us to document our concerns with regard to the evidence that had been developed in the MacDonald case. That evidence ran along the lines that had been outlined by Mr. Plaza and Mr. Weir well over a year before and was essentially confirmed by the attorneys who had been assigned to the investigations from the Public Integrity Section in July of 1980. There were significant discrepancies between Weinberg's account and the objective evidence which indicated that MacDonald was involved in any illegal transaction. By two separate memoranda both submitted on or about February 27, 1981, we attempted to identify those discrepancies for the Criminal

Division. Despite that information, I was informed that not only had Mr. Renfrew decided to proceed with an indictment of Mr. MacDonald but further that he had decided that the case against Mr. MacDonald would be removed from consideration by the Grand Jury in the District of New Jersey and transferred to the Eastern District of New York.

Thereafter on March 2, 1981, reportedly as his last official act, former Attorney General Charles B. Renfrew recommended that Mr. Plaza, Mr. Weir and I be disciplined and that the Office of Professional Responsibility review his findings and determine what discipline would be appropriate.

On November 25, 1981, by letter, I was informed by the now Associate Attorney General that the Office of Professional Responsibility had recommended

against discipline and that he concurred in that recommendation.

I resigned as United States Attorney for the District of New Jersey on December 3, 1981, after having served with that Office for over 9 years.

Mr. Chairman and Members of the Committee, the foregoing is intended to be a summary of my involvement in the ABSCAM investigations. Subsequent to transfer of the case to the Eastern District of New York, Commissioner MacDonald was indicted. I do not know as I sit here whether the information that was developed during the course of the investigation conducted by Mr. Plaza, Mr. Weir and my office was ever communicated to the Grand Jury in the Eastern District of New York. Unfortunately, that concern has perhaps been mooted by Mr. MacDonald's death.

The issues raised by the manner in which the ABSCAM investigation was handled, however, have not been mooted by either Commissioner MacDonald's death or the conviction of a number of public officials. I have never during the course of my career as a prosecutor been exposed to such institutional resistance and an intentional attempt to thwart the discovery of facts that were relevant to a criminal investigation.

Whether the techniques used in ABSCAM require this Subcommittee to recommend further guidelines will never be known until the whole story of ABSCAM is told. And it cannot be told without this subcommittee's review of all of the internal memoranda that were prepared during the long course of that investigation. Based on the evidence that I have seen, Melvin Weinberg perjured himself, fabricated

evidence, shared in the payoffs and has been shielded from having to account for his activities by the very same people who are charged with the enforcement of law. His activities in this regard have not been fully examined, and the extent to which his true actions impact upon the verdicts has not been evaluated by the Courts. No such evaluation can be made until all of the facts concerning Weinberg's actions during the undercover phase are disclosed. In New Jersey we attempted to discover those facts and to professionally document the results of our efforts. For those efforts some of us were recommended for discipline because there was not then nor does there appear to be now any desire on the Department's part to know, or acknowledge what really happened in ABSCAM.

Mr. Chairman, that is the end of

my summary, and I am prepared to answer any questions the committee may care to ask.

OFFICE OF THE ATTORNEY GENERAL  
Washington, D.C. 20530

January 14, 1981

Honorable William W. Robertson  
United States Attorney  
Newark, New Jersey 07102

Dear Mr. Robertson:

You have apprised me today in my office of your misgivings about the ABSCAM investigation. I have read all of the memoranda relating to this matter and been fully advised of the facts and circumstances underlying the present events. It is imperative that this matter be quickly resolved in order to protect the integrity of the Department of Justice, to safeguard the rights of the defendants, and to ensure that the ABSCAM investigation is not undermined for reasons having nothing to do with the merits of the cases.

Nevertheless, it is impossible to resolve the matter without a full exploration of the questions now subject to dispute. Accordingly, I am ordering that the following steps be taken immediately.

1. No one is to initiate an ex parte communication with any court having jurisdiction over cases arising from ABSCAM. Henceforth, the resolution of all legal issues and the exchange of all information shall be conducted with strict regard for the established procedures of the Department of Justice.



2. I will ask that representatives of the FBI and the Public Integrity Section of the Criminal Division debrief Assistant United States Attorneys Edward Plaza and Robert Weir regarding their participation in the ABSCAM investigation as soon as possible, and in any event no later than January 21, 1981. Particular attention should be paid to any information relevant to the due process hearings in the Eastern District of New York, the District of Columbia and the Eastern District of Pennsylvania. Assistant United States Attorneys Plaza and Weir should submit in advance or bring with them to the debriefing any materials in their possession that are relevant to these issues. The Criminal Division shall promptly determine whether any information resulting from the debriefings ought to be furnished to defense counsel. Any question as to whether any particular facts should be disclosed to defendants shall be resolved in favor of disclosure. The Criminal Division shall furnish prosecutors in the Eastern District of Pennsylvania, the District of Columbia and the Eastern District of New York with any such information for transmittal to defense counsel or to the Court. In the same spirit, I encourage full cooperation by Department of Justice personnel in all proceedings relevant to the resolution of fair trial and due process issues arising from the ABSCAM cases.

3. The Criminal Division shall, no later than January 23, 1981, make a recommendation to Deputy Attorney General Renfrew whether to seek an indictment of New Jersey Senator Joseph Maressa and

Commissioner Kenneth McDonald. If you wish, you may furnish to Judge Renfrew no later than February 9, 1981, any views you have regarding the appropriateness of indictments or the manner in which the cases should be handled. Judge Renfrew will determine whether, and if so, when indictments will be sought. If Judge Renfrew authorizes indictments, he will also decide by whom and under what circumstances the cases will be prosecuted.

4. No later than January 28, 1981, I ask that you furnish to Judge Renfrew a memorandum that demonstrates with particularity any ways in which the memorandum of January 6, 1981, by Deputy Assistant Attorney General Irvin B. Nathan is inaccurate, unfairly impugns the integrity of Messrs. Plaza and Weir, or unfairly criticizes their professional conduct. I am also directing Deputy Assistant Attorney General Irvin Nathan to document and justify the factual assertions in his memorandum of January 6 that are in dispute. Judge Renfrew, after reviewing all submissions and considering all the circumstances, will take such action as he deems appropriate to resolve any grievances arising from Mr. Nathan's memorandum.

5. Finally, I direct you to furnish to Judge Renfrew no later than January 28, 1981, an explanation of the reasons and justifications for the ex parte communications by Messrs. Plaza and Weir with the four United States district judges having responsibility for cases arising out of ABSCAM. Based on your

report, and any other information that is appropriate to his inquiry, Judge Renfrew will review the matter and determine, in light of Department regulations and practices, whether the office acted appropriately under the circumstances.

Sincerely,

/s/

Benjamin R. Civiletti  
Attorney General

cc: Charles B. Renfrew  
Deputy Attorney General

Philip B. Heymann  
Assistant Attorney General  
Criminal Division

1-14-81--handed  
to USA  
Robertson

No. 83-530

Office - Supreme Court, U.S.

FILED

DEC 12 1983

ALEXANDER L. STEVAS.

CLERK

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**In the Supreme Court of the United States**

OCTOBER TERM, 1983

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FRANK THOMPSON, JR., PETITIONER

v.

UNITED STATES OF AMERICA

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ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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BRIEF FOR THE UNITED STATES IN OPPOSITION

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REX E. LEE

*Solicitor General*

STEPHEN S. TROTT

*Assistant Attorney General*

KATHLEEN A. FELTON

*Attorney*

*Department of Justice*

*Washington, D.C. 20530*

*(202) 633-2217*

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### **QUESTION PRESENTED**

Whether the district court erred in denying petitioner's new trial motion on the ground that the new evidence on which petitioner relied was inadmissible.

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**In the Supreme Court of the United States**

OCTOBER TERM, 1983

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No. 83-530

FRANK THOMPSON, JR., PETITIONER

*v.*

UNITED STATES OF AMERICA

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*ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT*

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**BRIEF FOR THE UNITED STATES IN OPPOSITION**

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**OPINIONS BELOW**

The opinion of the court of appeals (Pet. App. 1a-17a) is reported at 710 F.2d 915. The opinions of the district court (Pet. App. 18a-21a, 22a-35a) are unreported.

**JURISDICTION**

The judgment of the court of appeals was entered on June 14, 1983 (Pet. App. 1a). A petition for rehearing was denied on July 28, 1983 (Pet. App. 36a). The petition for a writ of certiorari was filed on September 26, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

**STATEMENT**

After a jury trial in the United States District Court for the Eastern District of New York, petitioner, a former congressman, was convicted of several offenses arising out of what is known as the Abscam investigation: bribery, in violation of 18 U.S.C. 201(c); accepting

an unlawful gratuity, in violation of 18 U.S.C. 201(g); and conspiracy to defraud the United States and to commit bribery, in violation of 18 U.S.C. 371. He was sentenced to three years' imprisonment and a fine of \$20,000. The court of appeals affirmed his conviction (692 F.2d 823 (1982)), and this Court denied certiorari (No. 82-1199 (May 31, 1983)).

Petitioner then moved for a new trial. The district court denied the motion (Pet. App. 18a-21a) and the court of appeals affirmed (*id.* at 1a-17a).<sup>1</sup>

1. The evidence admitted at petitioner's trial is summarized in the opinion affirming his conviction and in our brief in opposition to petitioner's previous petition for a writ of certiorari.<sup>2</sup> Undercover agents, posing as representatives of an Arab sheik seeking assistance with immigration matters, gave a briefcase containing \$50,000 to co-conspirator Howard Criden in petitioner's presence. This exchange occurred during a videotaped meeting, and it was both preceded and followed by recorded conversations that showed that petitioner understood that some of the money was intended for him. Criden's law partner testified that Criden gave \$20,000 of this money to petitioner.

Petitioner then arranged for a similar transaction involving then-Congressman John Murphy, in which \$50,000 was handed to Criden in Murphy's presence;

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<sup>1</sup> The district court had also denied a subsequent motion to supplement the record on appeal (Pet. App. 22a-35a), but the court of appeals allowed the materials under Fed. R. App. P. 10(e) and affirmed the denial of a new trial upon the entire record (Pet. App. 17a).

<sup>2</sup> We filed a consolidated brief in opposition (82-1183 Br. in Opp.) in *Lederer v. United States*, No. 82-1183; *Murphy v. United States*, No. 82-1187; *Thompson v. United States*, No. 82-1199; *Criden v. United States*, No. 82-1240; and *Myers v. United States*, No. 82-1255.



Criden gave petitioner \$10,000 of this money for himself and \$15,000 for Murphy. Congressman John Murtha also testified at petitioner's trial that petitioner had told him he could receive \$50,000 of the sheik's money in return for assistance in immigration matters. At trial, petitioner denied receiving any of the money and denied any knowledge that money was passed; he claimed that he thought the briefcase transferred in his presence contained only documents. His theory was that Criden had kept all the money, duping both the sheik's representatives and petitioner. Pet. App. 3a-4a; 82-1183 Br. in Opp. 7-10.

2. In his motion for a new trial, petitioner offered evidence that, he asserted, showed that FBI informer Melvin Weinberg, who posed as one of the sheik's representatives, had received a kickback from the target of another aspect of the Abscam investigation. In an Abscam operation distinct from that involving petitioner, an FBI agent transferred \$100,000 of the sheik's money to Angelo Errichetti, then mayor of Camden, New Jersey, in the presence of Kenneth N. MacDonald, then vice-chairman of the New Jersey Casino Control Commission. This payment resulted in an indictment against MacDonald, alleging that MacDonald knew some of the money was an unlawful payment intended for him. MacDonald died before trial of the charges against him. Pet. App. 5a. Errichetti was indicted and convicted for his role in still other phases of the Abscam investigation (see 82-1183 Br. in Opp. 2-6).

The principal evidence petitioner submitted in support of his motion for a new trial was an affidavit executed by Weinberg's wife long after petitioner was convicted. In it she recounted an episode in which she drove her husband to a meeting with Errichetti. According to the affidavit, Weinberg met Errichetti and returned with a briefcase, which he patted, saying "forty-five." The affidavit further stated that Weinberg

said he had “ducked” the FBI agent who was supposed to be watching him, so that the agent did not know about this meeting. Pet. App. 5a, 61a-62a. In addition to the affidavit, petitioner submitted an FBI report of an interview with Joseph DiLorenzo, Errichetti's nephew and chauffeur, who told of driving Errichetti to a meeting with Weinberg on the day after the FBI agent had handed Errichetti the briefcase containing \$100,000 in MacDonald's presence (*id.* at 6a).

Petitioner asserts that if this evidence had been available to him, he would have argued that Weinberg had conspired with Errichetti to deceive both the other undercover agents and MacDonald. Such a showing, petitioner contends, would have enabled him to base his defense on the theory that Weinberg had also conspired with Criden to deceive petitioner. In seeking a new trial, petitioner introduced memoranda from the files of his trial counsel that, he said, showed that they considered advancing such a theory but abandoned it. See Pet. 5-6; Pet. App. 7a-8a, 19a, 28a-29a.<sup>3</sup>

3. The district court denied petitioner's motion for a new trial. The court characterized petitioner's new evidence as “not strong” (Pet. App. 31a) but assumed that it showed that “Weinberg and Errichetti shared the MacDonald bribe money” (*id.* at 28a). But, the court ruled, had this evidence been offered at the trial, it would have been excluded under Fed. R. Evid. 403 on the ground that its probative force was too slight—it did not even “bear directly on the guilt or innocence of” petitioner (Pet. App. 31a)—and it required too extensive an inquiry into collateral matters. The court explained that “[i]n order \* \* \* fully [to] present the

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<sup>3</sup> Petitioner also sought a new trial on the basis of evidence that Weinberg had received gifts from Errichetti. This evidence was apparently intended to challenge Weinberg's credibility. Petitioner appears now to have abandoned any contention arising from these gifts. See page 8 note 4, *infra*.

claim about MacDonald that [petitioner] now advances, it would have been necessary to try the entire MacDonald case, a prospect which would have involved many days if not weeks of testimony, and which would have involved a large number of additional tapes" (Pet. App. 31a). The district court also reasoned that since petitioner's trial defense was that he was deceived by one person—and that defense was unsuccessful—there was little reason to believe that petitioner would have succeeded if he had urged that he was in fact deceived by two persons (*id.* at 20a).

The court of appeals affirmed. It first noted several weaknesses in the evidence petitioner introduced in support of his motion for a new trial. For example, Mrs. Weinberg's account of the meeting differed from DiLorenzo's in important respects, and the affidavit of Mrs. Weinberg, who died shortly after executing it, may have been inadmissible. Moreover, the affidavit of petitioner's trial counsel carefully did *not* assert that counsel would have altered his defense theory if he had the evidence in question; it stated only that that evidence provided a "significantly stronger basis" for the theory on which petitioner now relies. Pet. App. 6a, 8a & nn.3, 4, 6. The court of appeals also noted (*id.* at 15a n.11) that petitioner's evidence might have been excludable under Fed. R. Evid. 404(b), because it was evidence of other acts offered "to prove the character of a person"—Weinberg—"in order to show that he acted in conformity therewith."

But the court of appeals then left aside these difficulties and ruled that, in any event, the district court had not erred. The court of appeals explained (Pet. App. 14a-15a):

We agree with Judge Pratt [the district judge] that the evidence in support of this claim does not warrant a new trial for the fundamental reason that it would not be admissible. Judge Pratt, hav-

ing presided at [petitioner's] trial, was in the best position to make the assessment required by Rule 403. As he concluded, the probative force of the new evidence is not substantial. It may show \* \* \* that Weinberg received a portion of the \$100,000 MacDonald payment. But it does not show that MacDonald did not receive some of that money and it leaves entirely to conjecture the claim that MacDonald was duped \* \* \*. It is entirely too speculative to move from the claim that Weinberg received a kickback (itself a matter of sharp dispute), to the claim that Weinberg and Errichetti duped MacDonald, and then to the ultimate claim that Weinberg and Criden (without Errichetti) duped [petitioner].

#### ARGUMENT

1. Petitioner relies indiscriminately on various pieces of evidence that, he asserts, show that Weinberg received a kickback from Errichetti. But petitioner does not explain the theory on which these pieces of evidence entitle him to relief. For example, the district court (Pet. App. 20a) rejected petitioner's contention that he is entitled to relief under the usual standards governing a motion for a new trial based on newly discovered evidence, and petitioner does not appear to renew this contention.

Similarly, petitioner appears to have contended in the courts below that the government had an obligation to disclose evidence that Weinberg shared in the MacDonald money because it revealed that the government knew petitioner was innocent. But Mrs. Weinberg's affidavit was not in the government's possession—indeed, it did not even exist—before the trial. The only supposedly exculpatory evidence that petitioner asserts was in the government's possession was DiLorenzo's statement and evidence that Weinberg had attempted to manufacture an alibi for the time he was allegedly meeting Errichetti (see Pet. 11-13). As the

court of appeals explained, it is wholly implausible to contend that this evidence was so exculpatory that the government was obligated to reveal it (Pet. App. 16a):

It remains a matter of dispute whether Weinberg met with Errichetti \* \* \* and ever received a kickback from him. It is fanciful to suggest that the Government knew or should have known that such a meeting occurred, that "therefore" a kickback was received, that "therefore" MacDonald was duped, and that "therefore" [petitioner] was duped. Neither prior to [petitioner's] trial, nor since, is there any basis to believe that any of the evidence against him was known to the prosecution to be false, or was false at all.

Petitioner now appears to have abandoned this contention as well.

Petitioner's sole contention now is that he is entitled to relief because defense counsel, before trial, requested "information \* \* \* relating to \* \* \* any violations or suspected violations of federal or state law by Melvin Weinberg" (Pet. App. 55a), and the government did not disclose the DiLorenzo statement. But it is far ~~from clear that~~ petitioner's request, reasonably interpreted, reach~~d~~ DiLorenzo's statement. The government disclosed information about Weinberg's criminal background (see 82-1183 Br. in Opp. 25), and it was not immediately apparent that DiLorenzo's statement fell into the same category of "information relating to violations of law." Moreover, petitioner's trial strategy gave government attorneys no reason to believe that petitioner was seeking evidence like the DiLorenzo statement. Finally, as petitioner concedes (Pet. 11 n.2), the DiLorenzo statement was disclosed in time for petitioner to use it at the post-trial proceedings on his motion to set aside the conviction, but petitioner chose not to use it. In these circumstances, the courts below did not err in concluding that the government acted ~~im~~properly in not disclosing this information before trial.

2. But the more fundamental difficulty with all of petitioner's contentions is that petitioner completely fails to address the principal basis of the decision below—that none of the evidence on which petitioner now relies would have been admitted at his trial even if it had been available then. Even if that evidence demonstrated that Weinberg shared the MacDonald money with Errichetti, the mere showing that Weinberg received a kickback would be of no help to petitioner; it would not in any way suggest that petitioner was any less guilty.<sup>4</sup> Even on petitioner's own theory, he would first have to make the further showings that MacDonald did not also share in the payment and that McDonald was "duped" and did not intend to sell his influence.

As the court of appeals noted, "the complicated and often contradictory evidence concerning the MacDonald payment \* \* \* abundantly supports Judge Pratt's conclusion that [petitioner's] current claim would have required trial of the entire MacDonald case" (Pet. App. 15a). Moreover, petitioner identifies no substantial evidence tending to show that McDonald received none of the money. Indeed, the Senate Select Committee report, portions of which petitioner also introduced in support of his motion for a new trial (see Pet. App. 9a), concluded that while Weinberg shared some of the MacDonald payment, MacDonald himself knowingly exchanged his influence for the undercover agents' cash (see *id.* at 32a-33a).

Even beyond that, as both courts below noted, even if petitioner somehow showed not only that Weinberg received a kickback but that MacDonald was deceived by Weinberg and Errichetti and was not corrupt, peti-

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<sup>4</sup> As both courts below noted, and as petitioner appears not to dispute, petitioner's conviction did not rest on Weinberg's testimony (Pet. App. 13a, 33a-34a); thus a general challenge to Weinberg's credibility would not have aided petitioner.



tioner would then have to show that Weinberg engineered the same scheme with Criden. He would *then* have to show that petitioner did not share in the money with Weinberg and Criden.<sup>5</sup> And even that would not be sufficient unless petitioner did not know that money was transferred to Criden in exchange for his services.<sup>6</sup>

In these circumstances, this Court plainly should not review the district court's highly discretionary determination, emphatically endorsed by the court of appeals, that the evidence petitioner now offers would not have been admitted at trial because its probative value was "substantially outweighed by the danger of \* \* \* confusion of the issues \* \* \* [and] by considerations of undue delay [and] waste of time" (Fed. R. Evid. 403). Petitioner's extended discussion of whether *United States v. Agurs*, 427 U.S. 97 (1976), and *Brady v. Maryland*, 373 U.S. 83 (1963), require that he be granted relief overlooks the fact that a fundamental holding of those cases is that even an inexcusable failure to disclose evidence does not entitle a defendant to relief if the evidence would not have been admissible at trial. See 373 U.S. at 90-91; 427 U.S. at 105-106.

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<sup>5</sup> The Senate Select Committee report relied on by petitioner recounts Criden's testimony that he did indeed give portions of the two \$50,000 payments to petitioner (Pet. App. 16a n.13).

<sup>6</sup> Petitioner also does not explain how his new theory can be reconciled with Congressman Murtha's testimony that petitioner told him \$50,000 could be earned by helping the sheik with immigration problems.

**CONCLUSION**

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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